

THE  
T R I A L  
O F

Christopher Atkinson, Esq.

[PRICE TWO SHILLINGS.]

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THE

TRIAL

OF

Christopher Atkinson, Esq.

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THE  
T R I A L  
OF  
Christopher Atkinson, Esq; K  
MEMBER OF PARLIAMENT  
FOR  
HEYDON IN YORKSHIRE,  
AND LATE  
C O R N F A C T O R  
TO HIS MAJESTY'S VICTUALLING-BOARD,  
FOR  
P E R J U R Y.

Tried in the COURT of KING'S BENCH,  
BEFORE THE RIGHT HONOURABLE  
WILLIAM EARL OF MANSFIELD,  
AND A  
S P E C I A L JURY,  
On the Nineteenth Day of JULY, 1783.

TAKEN IN SHORT HAND,  
B Y W. WILLIAMSON.

L O N D O N :

Sold by J. DEBRET, (*Successor to Mr. Almon*) Piccadilly;  
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H

T R A L

Christopher Atkinson, Esq;

MEMBER OF PARLIAMENT

FOR

NEYDON IN YORKSHIRE

AND LATE

CORNFACOR

TO HIS MAJESTY'S VICTUALLING BOARD

FOR

P E R J U R Y

Given in the Court of King's Bench

before the right honorable

WILLIAM EARL OF MANSFIELD

AND A

SPECIAL JURY

On the Nineteenth Day of July, 1783

TAKEN IN SHORT HAND

BY W. WILLIAMSON

L O N D O N :

Sold by J. Dares, (formerly a Dr. of the University of Oxford, and now a Dr. of the University of Cambridge) opposite the Admiralty, in Pall Mall, London. Price 1s. 6d. per Volume. Bound in the best manner.

In the KING'S-BENCH, July 19, 1783.

Before Lord MANSFIELD and a Special Jury.

# The KING

against

CHRISTOPHER ATKINSON, Esq.

## Indictment for Perjury.

Indictment of Easter Term, in the Twenty-third Year of King GEORGE the Third.

### Plea of not guilty of the same Term.

*Middlesex.* **B**E IT REMEMBERED, That at the general session of Oyer and Terminer of our Lord the King, holden in and for the County of Middlesex, at the Session-House for the said County, on Monday the twenty-fourth day of February, in the twenty-third year of the reign of our Sovereign Lord George the Third, King of Great-Britain, &c. before William Mainwaring, Charles Shepperd, Thomas Cogan, Henry Lambe, Esquires, and others their fellows, Justices of our said Lord the King, assigned to keep the peace in the County aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, committed in the same County, by the  
B oath



oath of twelve Jurors, good and lawful men of the County aforesaid, now here sworn and charged to inquire for our said Lord the King for the body of the same County : It is represented as followeth, (that is to say) Middlesex (to wit) The Jurors of our Sovereign Lord the King, upon their oath present, That Christopher Atkinson, late of Westminster, in the County of Middlesex, Esquire, for divers years now last past, hath carried on and exercised the trade and business of a cornfactor, and that the said Christopher Atkinson whilst he so carried on and exercised the aforesaid trade and business, and before the making of the affidavit herein after-mentioned, as such cornfactor, purchased for, and supplied the Commissioners of our said Lord the King for victualling his Majesty's Navy, for the time being, with divers large quantities of malt and grain. And the Jurors aforesaid, upon their oath aforesaid, further present, That the said Christopher Atkinson contriving and intending to aggrieve and injure one William Bennett, on the seventh day of February, in the twenty-first year of the reign of our said present Sovereign Lord George the Third, King of Great-Britain, and so forth, in order to obtain a Rule of the Court of our said Lord the King, before the King himself, against the said William Bennett, whereby it might be ordered by the said Court that a day should be given to the said William Bennett to shew cause why an information should not be exhibited against him, the said William Bennett, for certain misdemeanors in publishing certain supposed scandalous libels concerning the said Christopher Atkinson, as such cornfactor, in purchasing and supplying the said Commissioners for victualling

victualling his Majesty's Navy, did come in his the said Christopher Atkinson's proper person into the said Court of our said Lord the King, before the King himself, (the said Court then being at Westminster aforesaid, in the county of Middlesex aforesaid) and did then and there produce to the said Court a certain Affidavit in writing of him the said Christopher Atkinson, to be exhibited to the said Court, for the purpose aforesaid; and then and there, before the same Court, was duly sworn, and took his corporal oath upon the Holy Gospel of God concerning the truth of the matters contained in the said affidavit (the same Court then and there having a lawful and competent authority to administer the same oath to the said Christopher Atkinson, and to take and receive the said affidavit of the said Christopher Atkinson) and that the said Christopher Atkinson being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, and having no regard to the laws and statutes of this realm, nor fearing the punishment therein contained, did then and there (to wit) on the said seventh day of February, in the twenty-first year aforesaid, at Westminster aforesaid, in the said County of Middlesex, in and by his affidavit aforesaid, upon his oath aforesaid, before the said Court (the said Court then and there having a lawful and competent authority to administer the said oath to the said Christopher Atkinson, and to receive his said affidavit) did falsely, corruptly, knowingly, wilfully, and maliciously depose and swear (among other things) as follows (that is to say,) "That he (meaning the said Christopher Atkinson) hath for

several years last past (meaning before the making of the aforesaid Affidavit) followed the business or employment of a cornfactor, and in that capacity hath served the Commissioners for victualling his Majesty's Navy from the year one thousand seven hundred and seventy-eight, to this time (meaning the time of making the aforesaid affidavit) with Wheat and other Grain, and with Malt from one thousand seven hundred and seventy-nine, and that in a printed paper called the General Advertiser and Morning Intelligencer, of Wednesday the thirty-first day of January, one thousand seven hundred and eighty-one, and hereunto (meaning to the aforesaid affidavit) annexed, marked B, appeared, and which this deponent (meaning the said Christopher Atkinson) hath perused, a letter or paragraph addressed, "My " Lord," and subscribed, "William Bennett," Camberwell, January the twenty-fifth, one thousand seven hundred and eighty-one. And this deponent (meaning the said Christopher Atkinson) saith, that the said letter or paragraph so addressed and subscribed and inserted in the said paper hereunto (meaning the aforesaid affidavit) annexed as this deponent (meaning the said Christopher Atkinson) believes doth refer to this deponent (meaning the said Christopher Atkinson) and was intended to defame him (meaning the said Christopher Atkinson) in his (meaning the said Christopher Atkinson's) character and reputation of a cornfactor, and that by the name of Mr. Christopher Atkinson, mentioned in the said letter or paragraph, this deponent (meaning the said Christopher Atkinson) is meant, and that the said William Bennett by the publication of the said letter



letter or paragraph as aforesaid, did intend to represent him, this deponent (meaning the said Christopher Atkinson) to the publick as having defrauded the Commissioners for victualling his Majesty's Navy, in the way of his (meaning the said Christopher Atkinson's) business, as their (meaning the said Commissioners) cornfactor, and to induce the publick to believe, that when the very finest ship malt was selling at twenty-nine shillings to thirty shillings, and the additional charges of dicount (meaning discount) commission for purchasing, lighterage, &c. amounting to four shillings and three-pence per quarter, and making together thirty-four shillings and three-pence per quarter, he this deponent (meaning the said Christopher Atkinson) as cornfactor for the said Commissioners, purchased Malt at that price, and charged to the said Commissioners for a great quantity of such Malt, so by him purchased for the said Commissioners, thirty-seven shillings and three-pence per quarter, and for some thousand quarters thirty-six shillings and six-pence; and that many of the Malts delivered to, or to the order of the said Commissioners at that price and time, were by him this deponent (meaning the said Christopher Atkinson) bought at twenty-seven shillings per quarter, and some under, and by such publication this deponent (meaning the said Christopher Atkinson) apprehends and believes the said William Bennett's intention, was, to represent and to have it believed by the publick, that he this deponent (meaning the said Christopher Atkinson) defrauded the said Commissioners in the difference of the price, which the said William Bennett in the said letter, or paragraph, pretends such Malt was

was purchased at, and the price he this deponent, (meaning the said Christopher Atkinson) as the said William Bennett in the said letter or paragraph pretends, charged the said Commissioners with; and this deponent (meaning the said Christopher Atkinson) saith, that in the transactions he (meaning the said Christopher Atkinson) hath had with the said Commissioners as their (meaning the said Commissioners) cornfactor, he (meaning the said Christopher Atkinson) hath charged them (meaning the said Commissioners) the usual commission of six-pence a quarter and no more for all Malt and Grain supplied by him (meaning the said Christopher Atkinson) and that he (meaning the said Christopher Atkinson) never did at any time during his (meaning the said Christopher Atkinson's) transactions with the said Commissioners charge more than the usual commission of six-pence per quarter beyond the price he (meaning the said Christopher Atkinson) actually paid for any Malt or Grain purchased by him (meaning the said Christopher Atkinson) for the said Commissioners, as their (meaning the said Commissioners) cornfactor," as by the said Affidavit of the said Christopher Atkinson in writing, remaining in the said Court of our said Lord the King, before the King himself at Westminster aforesaid, in the County of Middlesex aforesaid, it more fully appears: Whereas in truth and in fact the said Christopher Atkinson, before the making of his said Affidavit, in the transactions which he had with the said Commissioners for victualling his Majesty's Navy, as their cornfactor, to wit, on the twenty-ninth day of June, in the year of our Lord one thousand seven hundred and seventy-nine, at Westminster aforesaid,

aforesaid, in the said county of Middlesex, did charge the said Commissioners more than the usual commission of six-pence per quarter for and in respect of sundry quantities of Malt amounting to a large quantity, to wit, seven hundred and thirty-three quarters and three bushels of Malt before that time, to wit, between the twenty-fifth day of May, in the said year of our Lord one thousand seven hundred and seventy-nine, and the fifteenth day of June in the same year, to wit, at Westminster aforesaid, supplied by him (that is to say) three shillings and nine-pence per quarter for and in respect of each and every quarter of the said seven hundred and thirty-three quarters of Malt, and in that proportion for the said three bushels of Malt so supplied by him as aforesaid, more than the usual commission of six-pence per quarter for the said seven hundred and thirty-three quarters and three bushels of Malt. And whereas in truth and in fact the said Christopher Atkinson before the making of his said Affidavit, during his transactions with the said Commissioners for victualling his said Majesty's Navy, as their cornfactor, to wit, on the said twenty-ninth day of June, in the said year of our Lord one thousand seven hundred and seventy-nine, at Westminster, in the said county of Middlesex, did charge more than the usual commission of six-pence per quarter for and in respect of a large quantity, to wit, one hundred and sixty-six quarters and seven bushels of Malt before that time, to wit, on the twenty-eighth day of May, in the year of our Lord one thousand seven hundred and seventy-nine, at Westminster aforesaid, purchased by him the said Christopher Atkinson for the said Commissioners, as their cornfactor,



factor, of and from one Robert Mitton, that is to say, three shillings and nine-pence per quarter, for and in respect of each and every of the said one hundred and sixty-six quarters of Malt; and in that proportion for, and in respect of the said seven bushels of Malt, so purchased by him of the said Robert Mitton, beyond the price which he, the said Christopher Atkinson, actually paid to the said Robert Mitton for the same. And whereas in truth and in fact the said Christopher Atkinson, before the making his said Affidavit, during his transactions with the Commissioners for victualling his Majesty's Navy as their cornfactor; to wit, on the twenty-ninth day of June, in the said year of our Lord one thousand seven hundred and seventy-nine, at Westminster aforesaid, in the said county of Middlesex, did charge more than the usual commission of six-pence per quarter, for and in respect of a large quantity; to wit, one hundred and ninety-seven quarters of Malt before that time; to wit, on the fifteenth day of June, in the said year of our Lord one thousand seven hundred and seventy-nine; to wit, at Westminster aforesaid, purchased by him, the said Christopher Atkinson, for the said Commissioners as their cornfactor, of and from one Thomas Gray; that is to say, four shillings and three-pence per quarter, for and in respect of each, and every of the said one hundred and ninety-seven quarters of Malt, so purchased by him of the said Thomas Gray, beyond the price which he, the said Christopher Atkinson, actually paid to the said Thomas Gray for the same. And whereas in truth and in fact the said Christopher Atkinson, before the making his said Affidavit, during his transactions with the Commissioners

missioners for victualling his Majesty's Navy as  
 their cornfactor; to wit, on the thirty-first day of  
 March, in the year of our Lord one thousand se-  
 ven hundred and eighty, at Westminster aforesaid,  
 in the said County of Middlesex, did charge more  
 than the usual commission of six-pence per quarter,  
 for and in respect of a large quantity; to wit, two  
 hundred and fifty quarters and one bushel of Malt  
 before that time; to wit, on the twenty-seventh  
 day of March, in the year of our Lord one thou-  
 sand seven hundred and eighty, at Westminster  
 aforesaid, in the said County of Middlesex; pur-  
 chased by him, the said Christopher Atkinson, for  
 the said Commissioners, as their cornfactor, of  
 and from one William Adams; that is to say, four  
 shillings and eight-pence per quarter, for and in  
 respect of each and every of the said two hundred  
 and fifty quarters of Malt; and in that proportion  
 for and in respect of the said one bushel of Malt,  
 so purchased by him of the said William Adams,  
 beyond the price which he, the said Christopher  
 Atkinson, actually paid to the said William Adams  
 for the same. Whereas in truth and in fact, the  
 said Christopher Atkinson before the making of  
 his said Affidavit, during his transactions with the  
 said Commissioners for victualling his Majesty's  
 Navy, as their cornfactor; to wit, on the thirty-first  
 day of March, in the said year of our Lord one  
 thousand seven hundred and eighty, at Westmin-  
 ster aforesaid, in the said County of Middlesex,  
 did charge more than the usual commission of six-  
 pence per quarter, for and in respect of a large  
 quantity; to wit, two hundred and fifty quarters  
 and one bushel of Malt, before that time; to wit,  
 on the twenty-seventh day of March, in the year  
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of our Lord one thousand seven hundred and eighty, at Westminster aforesaid, in the said County of Middlesex, purchased by him, the said Christopher Atkinson, for the said Commissioners as their cornfactor, of, and from, one William Adams, (that is to say) two shillings per quarter, for and in respect of each and every of the said two hundred and fifty quarters of Malt; and in that proportion for and in respect of the said one bushel of Malt, so purchased by him of the said William Adams, beyond the price which he, the said Christopher Atkinson, actually paid to the said William Adams for the same. And whereas in truth and in fact, the said Christopher Atkinson, before the making of his said Affidavit, in the transactions which he had with the said Commissioners for victualling of his said Majesty's Navy, as their cornfactor; to wit, on the thirtieth day of December, in the said year of our Lord one thousand seven hundred and eighty, at Westminster, in the said County of Middlesex, did charge the said Commissioners more than the usual commission of six-pence per quarter, for and in respect of sundry quantities of Malt, amounting to a large quantity; to wit, one thousand seven hundred and twenty seven quarters, and four bushels of Malt before that time; to wit, between the twelfth day of December, in the year of our Lord one thousand seven hundred and seventy-nine, and the thirtieth day of December, in the year of our Lord one thousand seven hundred and eighty; to wit, at Westminster aforesaid, in the said County of Middlesex, supplied by him; to wit, the sum of three-pence per quarter, for and in respect of each and every quarter of the said one thousand seven



even hundred and twenty-seven quarters of Malt; and in that proportion for the said four bushels of Malt, so supplied by him as aforesaid, more than the usual commission of six-pence per quarter; which said last mentioned Malt was purchased by the said Christopher Atkinson, for the said Commissioners, as their cornfactor, of different persons; that is to say, three hundred and ninety-eight quarters and four bushels, part of the said Malt, of John Alloway; two hundred quarters, other part thereof, of John Routh; two hundred and twenty-nine quarters, other part thereof, of Robert Letts; four hundred quarters, other part thereof, of George Phelps; one hundred quarters, other part thereof, of William Northcote; and four hundred quarters, residue of the said one thousand seven hundred and twenty-seven quarters, and four bushels of Malt, of Thomas Denyer; to wit, at Westminster aforesaid, in the County of Middlesex aforesaid. And whereas in truth and in fact the said Christopher Atkinson, before the making of his said Affidavit, during his transactions with the said Commissioners for victualling his said Majesty's Navy, as their cornfactor; to wit, on the thirtieth day of November, in the year of our Lord one thousand seven hundred and seventy-nine, at Westminster, in the said County of Middlesex, did charge more than the usual commission of six-pence per quarter, for and in respect of a large quantity; to wit, seven hundred and twenty-nine quarters and six bushels of wheat before that time, to wit, on the twenty-second day of November, in the said year of our Lord one thousand seven hundred and seventy-nine, at Westminster aforesaid, in the said County of Middlesex, purchased

by him the said Christopher Atkinson for the said Commissioners, as their cornfactor, of and from one William Adams (that is to say) one shilling and six-pence for and in respect of each and every of the said seven hundred and twenty-nine quarters of Wheat, and in that proportion for and in respect of the said six bushels of Wheat, so purchased by him of the said William Adams, beyond the price which he the said Christopher Atkinson actually paid to the said William Adams for the same. And whereas in truth and in fact, the said Christopher Atkinson before the making of his aforesaid Affidavit in the transactions which he had with the said Commissioners for victualling his Majesty's Navy, as their cornfactor; to wit, on the twenty-ninth day of January, in the year of our Lord one thousand seven hundred and eighty, at Westminster aforesaid, in the said County of Middlesex, did charge the said Commissioners more than the usual commission of six-pence per quarter, for and in respect of sundry quantities of Oats with the husks taken off, amounting to a large quantity; to wit, one thousand one hundred and fifty-six quarters before that time; to wit, between the third and twenty-sixth days of January, in the said year of our Lord one thousand seven hundred and eighty; to wit, at Westminster aforesaid, in the said County of Middlesex, supplied by him (that is to say) three-pence per quarter, for and in respect of each and every quarter of the said Oats with the husks taken off, more than the usual commission of six-pence per quarter. And whereas in truth and in fact, the said Christopher Atkinson before the making

making of his said Affidavit during his transactions with the said Commissioners for victualling his Majesty's Navy, as their cornfactor; to wit, on the twentieth day of June, in the year of our Lord one thousand seven hundred and eighty, at Westminster, in the said county of Middlesex, did charge more than the usual commission of six-pence per quarter for and in respect of a large quantity, to wit, six hundred and twenty-seven quarters and four bushels of Pease before that time; to wit, on the eighteenth day of June in the said year of our Lord one thousand seven hundred and eighty, at Westminster aforesaid, in the said county of Middlesex, purchased by him the said Christopher Atkinson for the said Commissioners, as their cornfactor, of and from one William Batson; that is to say, one shilling and six-pence, for and in respect of each and every of the said six hundred and twenty-seven quarters of Pease, and in that proportion for and in respect of the said four bushels of Pease so purchased by him the said Christopher Atkinson of the said William Batson, beyond the price which he the said Christopher Atkinson actually paid to the said William Batson for the same. And so the Jurors aforesaid, upon their oath aforesaid, do say that the said Christopher Atkinson on the said seventh day of February, in the twenty-first year aforesaid, at Westminster aforesaid, in the County of Middlesex aforesaid, before the said Court of our said Lord the King, before the King himself, by his own act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, did falsely, wilfully and corruptly,  
upon



upon his said oath so taken as aforesaid, commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said present Sovereign Lord George the King, his crown and dignity.

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Mr. LAW stated the different charges in the Indictment against the DEFENDANT.

Mr. SOLICITOR GENERAL.

May it please your Lordship, and you Gentlemen of the Jury,

I am counsel in this case in support of the prosecution against the defendant, Mr. Atkinson : I suppose you are already apprized of the charge from what you have heard—You have had a tolerable accurate account of it, at least the outlines, from the opening of the Indictment.—Gentlemen, the charge itself lies in a narrow compass—It is a charge of wilful and corrupt perjury, in an Affidavit sworn in this Court by Mr. Atkinson. If the charge is false, and what he swore in that Affidavit is true, it is impossible to say, till the contrary is proved.

Gentlemen, this Indictment arises out of a transaction, which, in a few words, I am about to state:—The defendant, Mr. Atkinson, is a man, repu-

reputable in his profession, very considerable in his dealings, and in a very respectable situation in life—a member of the House of Commons. Some years ago, I think in the year 1776, Mr. Atkinson was desirous of having a connection with the Victualling-Office, to supply that Board with such articles as they wanted for his Majesty's Navy, as cornfactor.—He got this connection—orders were given from time to time to supply the Victualling-Board with such quantities of Malt and Corn as they had occasion for. Accordingly he did supply them—he went on in this business a considerable length of time, till a fraud was discovered, which occasioned his dismissal. About this time, or I believe a little before he was dismissed, there was a suspicion among the trade concerning Mr. Atkinson, of his not having acted a fair and honourable part with the Publick in his transactions with the Victualling-Board.—He was attacked by a Mr. Bennett, in the public papers, in some letters signed *Scourge*.—The intention of the letters was to bring to publick view that he had made an exorbitant profit, at the expence of the Publick, by charging them with prices which he had never paid, and contrary to his engagements with the Commissioners.—This Mr. Bennett, who attacked him under this fictitious name, *Scourge*, afterwards wrote letters on the same subject, signed with his *own* name and place of abode.—Mr. Atkinson, finding himself thus exposed, and unable to repel those charges, resolved to attack the man who had attacked him;—accordingly, Mr. Atkinson applied to the Court of King's Bench, for a rule to shew cause why an information should not be

be filed against Mr. Bennett, for the attack made upon his character. All motions of this sort must be upon an Affidavit—it is upon that Affidavit, which he made in this Court, upon which this Indictment is founded.—I will not read all the different charges—the grand proposition is this, he swears in his Affidavit, “That in all the transactions that he had with the Commissioners of his Majesty’s Victualling-Board, as cornfactor, he has charged them the usual commission of six-pence the quarter; and that he never did, at any time, charge more than six-pence the quarter more than what he actually paid for Malt and other Grain.” That, Gentlemen, is the fact sworn by Mr. Atkinson.—Swearing that he never did, at any time, charge more than six-pence a quarter, over and above what he actually paid, which was the stipulated profit he had agreed to have for all Grain sent by their orders into his Majesty’s Stores.

Now, Gentlemen, I shall not trouble myself nor you, in going through all the facts which the witnesses will be called to; I shall only state one or two of them. One fact which I have to state arises out of a transaction in the year 1779. Mr. Atkinson sent in a bill of parcels to the Victualling-Board for 733 quarters and 3 bushels of Malt, as having been delivered between the 5th of May and the 15th of June, this Malt he charges 29s. and 6d. per quarter; besides, he charges freight, metage, portorage, &c. Now I will tell you what I can prove respecting this Malt so charged. He purchased 166 quarters and 7 bushels of this very Malt of a Mr. Mitton at 26s. 6d. per quarter, and 197 of Mr. Gray at 26s per quarter, so that  
of



of these two articles he cleared 59l more than he really paid or was entitled to receive.

Another article was in March 1780; 467 quarters of malt he charges 27s a quarter, 2s for freight and 8d for other charges. With respect to this malt, 250 quarters 1 bushel was bought of Mr. Adams, who lives at Tottness, in Devonshire; he bought it of him for 25s a quarter though he charges the Commissioners 27s. This malt was delivered by Mr. Adams into the King's Stores free of every expence whatever; freight, portage, and all other expence attending the delivery was paid by Mr. Adams, so that he fraudulently clears by this article 4s and 8d a quarter more than what he really paid.

Gentlemen, this is the nature of the case which I shall prove by unquestionable evidence, that he charged Government considerably more than his commission, though he swears in his Affidavit that he charged no more than 6d a quarter, which was allowed him. Now if this Affidavit be false he is guilty of gross Perjury. It is suggested to me that the way he means to defend himself is this, by taking the average prices of the different quantities, some charged less and some more, so that upon the whole it did not exceed the stipulated commission. Gentlemen, it is impossible for us to show where, and of whom he purchased every quarter of Malt and other Grain; however, we shall prove this great proposition, that in several instances he charged considerably more than what he paid, and received the money for those specific articles, contrary to what he has expressly sworn. I am told, that by the defence it will be admitted that it is true that he did charge more for the

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quan-

quantity of Malt he purchased of Mr. Adams, but that his Malt was of an inferior quality, that he put so much to it at a much higher price to make it, upon the average, the value he charged the Board.—But, Gentlemen, I will not enter into his defence before I hear it—I am not much inclined to anticipate what may be said in justification of his conduct. If I were satisfied there was no fraud committed on the Publick, nor no cheat practised, I should not think that a person in my situation, whose duty it is to claim justice to the Publick, justifiable in going on to prosecute an individual. If it should be made appear that no harm, nor no imposition was intended, but that in his dealings with the Victualling-Board he acted a fair and upright part, I will most heartily acquiesce in his acquittal: but I believe there is no foundation in fact for this sort of defence; for, it will appear, that the very Malt he bought of Mr. Adams, he gave orders not to mix it with any other.—Where a man buys of different people parcels of Grain, some at 25s. others at 30 or 31s. all put together, and charges an average price upon the whole, there is no harm in that.—If the man is innocent, God forbid that he should be found guilty; but if guilty, it is a crime of the first magnitude; it involves in it every idea of breach of trust, not only upon the Board, imposing upon them, cheating the Publick at large, and every individual who contributes to the public expence, but it is likewise a fraud and a cheat upon every person whom he dealt with, because he takes that money which they should put in their pockets. Gentlemen, I shall not take up your time but call the witnesses to the facts I have stated, and when  
you

you have heard the whole of the case, with the defence, you will find such verdict as you shall think proper.

**EVIDENCE for the PROSECUTION.**

Mr. Dealtry, the clerk of the Crown Office, put in the Affidavit and rule of the Court.

— Foster, Esq; proved that it was sworn in Court by the Defendant.

**JOHN WATTS, Esq; sworn.**

**Examined by Sir THOMAS DAVENPORT.**

Q. I believe Mr. Watts you are Secretary to the Commissioners of the Victualling-Board?

A. Yes, I am.

Q. You know Mr. Christopher Atkinson?

A. Yes.

Q. Have you seen him write? A. I have several times.

Q. Look at that paper, and say if you think it is his hand writing?

A. I believe it to be his writing.

*[The Affidavit was read, dated February 7, 1781, sworn in the Court of King's Bench; vide the Affidavit in the Indictment, and the Rule of Court granted thereon was in the following words,]*

“ Thursday next after the morrow of the Purification of the Blessed Virgin Mary, in the  
“ twenty-first year of King George the Third.

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“ London.



“ London. Upon reading the Affidavit of  
 “ Christopher Atkinson, Esq; and another, and  
 “ a printed paper thereto annexed, and five other  
 “ printed papers therein referred to, It is ordered  
 “ that Saturday next be given to William Bennett,  
 “ to shew cause why an information should not be  
 “ exhibited against him for certain misdemeanors,  
 “ in publishing certain scandalous libels.—Upon  
 “ notice of this rule to be given to him in the  
 “ meantime.—On the motion of Mr. Serjeant  
 “ Bolton.”

“ By the Court.

Q. Did you know Mr. Atkinson carried on the  
 business of a cornfactor? A. Yes.

Q. Was he employed as such by the Commis-  
 sioners of the Victualling-Office? A. Yes.

Q. Did he, in that character, supply the Vic-  
 tualling-Board with Malt, Corn, and other Grain,  
 by commission? A. Yes.

*Lord Mansfield.* Mr. Davenport, how do you  
 draw the line between supply and serving by Com-  
 mission?

*Sir Thomas Davenport.* The facts that we shall  
 prove are those that respect the commission. He  
 swears, in his Affidavit, that he never took more  
 than his commission, above what he paid.

Q [to the witness.] Produce the order of the  
 Board [which was read, and is in the following words.]

“ A minute 28th of May, 1779.—Ordered That  
 “ Mr. Christopher Atkinson be desired to purchase  
 “ Wheat and Malt, on the best terms he can, for  
 “ the use of his Majesty’s Stores at Portsmouth  
 “ and Plymouth, in the respective neighbourhoods  
 of

“ of those ports, or where else in the country he can  
 “ best procure them, whenever he can so supply  
 “ the said Stores as cheap, or cheaper, than by  
 “ shipping the said articles from London; duly  
 “ regarding the charges attending the different  
 “ modes of the supply as well as the quality, and  
 “ price of said Wheat and Malt, and that on  
 “ producing the usual and proper certificates of  
 “ the quantities so delivered into the said Stores,  
 “ he be paid for the same by a bill in course, and  
 “ be allowed the usual commission of six-pence  
 “ per quarter for his trouble, letting the Board  
 “ know from time to time his proceedings  
 “ therein.

“ Of which acquaint the Agents for their re-  
 “ ceiving Wheat and Malt from such persons as  
 “ he may purchase of, upon their sending the same  
 “ in. And direct Mr. Oakes to pay all the ex-  
 “ pences of measuring and landing the cargo of  
 “ Malt, shipped the 21st past on board the ship  
 “ Industry, William Paterson, Master. And Mr.  
 “ Ommanny to pay all the expences of measuring  
 “ and landing the cargo of Malt, shipped the 23d  
 “ past in the Industry, William Crouch, Master,  
 “ by Mr. Atkinson, for the supply of their re-  
 “ spective ports, in the same manner as they do  
 “ with respect to the Wheat sent from hence by  
 “ the said gentleman; and to pursue this method  
 “ with regard to any other cargoes of Malt that  
 “ he has shipped since the above-mentioned ones,  
 “ or that he may in future, placing the expence  
 “ thereof to their accounts of disbursements; and  
 “ direct them to pay the expence of measuring  
 “ and landing the said species, that may be bought  
 “ in the country, in the same manner as on those  
 “ cargoes

“ cargoes that are or may be shipped from hence,  
 “ and to furnish the persons who deliver the  
 “ Wheat or Malt with certificates for the same,  
 “ making them received from Mr. Atkinson, and  
 “ tell Mr. Oakes the Wheat certificates are to be  
 “ signed by himself, Master Miller, and Clerk of  
 “ the Checque; and the Malt certificates by him-  
 “ self, the Master Brewer, and the Clerk of the  
 “ Checque.

“ The Board having taken into consideration  
 “ to-day the method of purchasing Malt for the  
 “ use of the Victualling Service, came to a reso-  
 “ lution to have the said article purchased by  
 “ Mr. Christopher Atkinson by commission, in  
 “ the same manner as the other species of Grain,  
 “ and accordingly

“ Ordered, That Mr. Christopher Atkinson be  
 “ desired to purchase 1500 quarters (more or less)  
 “ of fine close dried Amber Malt, for the use of  
 “ his Majesty's Brewhouse at the Hartshorn, on  
 “ the best terms he can, to be delivered as de-  
 “ manded, and paid for by bill in course, adding  
 “ the discount and brokerage, quoted in Castaign's  
 “ stock-price paper, on the day the bills of par-  
 “ cels are dated, and that he be allowed the usual  
 “ commission of six-pence per quarter for his  
 “ trouble, letting the Board know his proceed-  
 “ ings therein.”

*[The following Orders were also produced and read.]*

“ Wednesday, 5th January, 1780.—Ordered,  
 “ That Mr. Christopher Atkinson do purchase the  
 “ herein aftermentioned articles for the use of His  
 “ Majesty's Mills and Stores at this port on the  
 “ best



“ best and cheapest terms he can, of the best and  
 “ soundest quality, and in such quantities, from  
 “ time to time, as shall all be most for the advan-  
 “ tage of the service; always taking care that  
 “ the three several corn mills and the stores be  
 “ duly supplied with the respective articles;  
 “ namely, Wheat, Malt, Pease and Flour: the  
 “ vouchers for Wheat shall be the sworn meter’s  
 “ bills, specifying the quantity in words at length,  
 “ and the weight of three several bushels of each  
 “ lot, to be figured on the back thereof, which  
 “ three bushels are to be measured and weighed  
 “ by the sworn meter, after the bulk shall have  
 “ been duly trimmed together by the journeymen  
 “ millers, during the receiving the Wheat into the  
 “ mills: and the said meter’s bills shall be backed  
 “ by the principal officer at each mill, (or in case  
 “ of his absence by the next in authority) and the  
 “ clerk of the cheque: the vouchers for the  
 “ Pease to be the sworn meter’s bills, and to be  
 “ backed by the principal officer present, and  
 “ clerk of the cheque. The vouchers for the  
 “ Malt to be the store-keeper and master brewer,  
 “ and clerk of the cheque’s certificate; and the  
 “ voucher for the Flour to be the store-keeper,  
 “ and clerk of the cheque’s certificate: and that  
 “ the said several articles be paid for by bills in  
 “ course, adding the discount and brokerage,  
 “ quoted in Castaing’s stock price-current, on  
 “ the day the bills of parcels are made out: and  
 “ that he be allowed the usual commission of six-  
 “ pence per quarter on Wheat, Malt, and Pease;  
 “ and one shilling per sack of 2 Cwt. and half on  
 “ Flour, for his trouble, laying his proceedings  
 “ before the Board, and continuing the same till  
 “ further orders.

“ Friday

" Friday, 7th of January, 1780.—Ordered,  
 " That Mr. Christopher Atkinson do purchase  
 " for his Majesty's Service, for the ports of Ports-  
 " mouth, Plymouth and Dover, the several arti-  
 " cles herein after-mentioned, on the best and  
 " cheapest terms he can, of such good and sound  
 " quality, and in such quantities from time to  
 " time, as shall all be most for the advantage of the  
 " service; always taking care that the several corn  
 " mills and stores be duly supplied with their  
 " respective articles; namely, Wheat, Malt,  
 " Pease, Flour and Oatmeal; that the vouchers  
 " for the due shipping of each article shall be the  
 " lighterman's certificate, and the ship master's  
 " receipt, severally proving the *quantity*; and for  
 " Wheat in particular, the Lighterman shall also  
 " certify its weight; and that the same be paid  
 " for by bills in course, adding the discount (and  
 " brokerage) quoted in Castaing's stock price  
 " current, the day the invoices are made out, and  
 " that for his trouble he be allowed the usual  
 " commission of six-pence per quarter on Wheat,  
 " Malt and Pease; and a shilling per sack, con-  
 " taining 2 Cwt. and a half nett on Flour and  
 " Oatmeal, laying his proceedings before the  
 " Board, and continue the same 'till further  
 " orders."

" Friday, 20th of August, 1779.—Ordered,  
 " That Mr. Christopher Atkinson do purchase  
 " Oats for his Majesty's Service, at this port on  
 " the best and cheapest terms he can, of a good  
 " and proper quality for making Groats, and in  
 " such quantities weekly as shall be most for the  
 " advantage of the service, and that he do cause the  
 " same

“ same to be made into Grots, in the best and  
 “ cheapest manner that he can, taking care from  
 “ time to time that the Grot mills at the Red-  
 “ house be duly supplied with Grots accord-  
 “ ingly, and that the said Oats, together with  
 “ the expence of making them into Grots, be  
 “ paid for by bill in course, adding the discount  
 “ and brokerage quoted in Castaing’s stock price  
 “ list current, on the day the bills of parcels are  
 “ made out, and that for his trouble he be  
 “ allowed the usual commission of six-pence per  
 “ quarter, laying his proceedings before the  
 “ Board, and continue the same until further  
 “ orders.”

THOMAS NEVILL, Esq; sworn.

Examined by Sir THOMAS DAVENPORT.

Q. Are you one of the clerks of the Victualling  
 Office? A. Yes.

Q. Was it in your department to make out the  
 victualling bills? A. Yes.

Q. Look at this bill of parcels. No. 838.—  
 Was that given into the office by Mr. Atkinson?

A. Yes, and signed by him the 31st March,  
 1780.

[*Invoice read, which was in the following words,*]

“ Invoice of four hundred and sixty-seven  
 “ quarters of Malt, shipt per the Providence,  
 “ John Helems, Master; and per the Carolina,  
 “ Robert Jones, Master, for the Stores at Ply-  
 “ mouth.



" mouth. By order of the Honourable the Com-  
 " missioners for victualling his Majesty's Navy.  
 " Board's minute, dated 7th January, 1780,  
 " viz.

" Quarters

252 per the Providence, John Helems.

215 per the Carolina, Robert Jones.

	s.	d.	
467 qurs. of Malt, at 27	0	£.630	9 0

Freight,	-	2	0	-	46	14	0
----------	---	---	---	---	----	----	---

Lighterage, metage,	}	-	0	8	-	15	11	4
portorage, &c.								

Commission,	-	0	6	-	11	13	6
-------------	---	---	---	---	----	----	---

Discount and brokerage, on } £.793 13 7½, at 11¼ per cent. }	-	89	5	9¼
---	---	----	---	----

£.793 13 7¼

Errors excepted.

London, 31st of March, 1780.

CHRISTOPHER ATKINSON.

" Received the 13th of March, 1780, on  
 " board of the Providence, from Christopher  
 " Atkinson, Esq; two hundred and fifty-two  
 " quarters of Malt, in loose bulk, to be delivered  
 " to the Agent Victualler, or his order, at Ply-  
 " mouth, per me,

JOHN HELEMS.

" These are to certify, That I have shipped by  
 " order of Christopher Atkinson, Esq; on board  
 " of the Providence, John Helems, Master,  
 " two hundred and fifty-two quarters of Malt for  
 " his Majesty's Stores at Portsmouth.

Witness my hand, 13th of March, 1780,

ROBERT HARVEY, Meter.

" Re-

Received 29th of March, 1780, on board  
 “ the Carolina, from Christopher Atkinson, Esq;  
 “ by Joshua Knight his Lighterman, two hun-  
 “ dred and fifteen quarters of Malt, for his  
 “ Majesty’s Stores at Plymouth.

Per me,

ROBERT JONES.

“ These are to certify, That I have shipped on  
 “ board the Carolina, Captain Robert Jones, by  
 “ the order of Christopher Atkinson, Esq. two  
 “ hundred and fifteen quarters Malt, to be  
 “ delivered into his Majesty’s Stores at Ply-  
 “ mouth.”

London, 29th of March, 1780.

Witness my hand,

JOSHUA KNIGHT, Lighterman.

*Mr. Bearcroft.* My Lord, is this evidence ad-  
 missable?—I asked the Gentlemen on the other  
 side what assignment they went upon; they told  
 me Mr. Adams, the 4th assignment, where it is  
 stated to be 250 quarters and one bushel.—The  
 next count is the 5th, which states the purchase  
 from Mr. Adams—My objection is to the des-  
 cription—that evidence which they produce,  
 shews that 252 quarters of Malt was purchased of  
 him; but in the assignment it is only 250 quarters  
 and one bushel.—I don’t know if I am perfectly  
 regular in taking the objection now.

*Lord Mansfield.* Whether it is applicable or  
 not, this is not the time to take the objection—  
 This is a paper under the defendant’s own hand,  
 signed by him, the Malt ship’d on board the Pro-  
 vidence.

GEORGE SWAFFIELD, Esq; sworn.

*Mr. Bearcroft.* My Lord, I cannot help thinking that I am regular in making the objection.—They are now going to prove, that he charged a price beyond what he really gave for that very quantity of Malt to support their 4th and 5th assignment.

*Lord Mansfield.* Let them finish with this part of the evidence.

*Sir Thomas Davenport [to the witness].* Was that bill delivered to the defendant, Mr. Atkinson?

A. It appears to me it was—I paid it.

[*Victualling Bill read, which was in the following words,*]

Mr. TREASURER.

Received 31st of March, 1780, No. 838.

“ We pray you to pay unto Mr. Christopher  
“ Atkinson the sum of seven hundred ninety-three  
“ pounds thirteen shillings and seven-pence, for  
“ the Malt, &c. as under-mentioned, by him  
“ purchased and delivered on board the Provi-  
“ dence and Carolina, John Helems and Richard  
“ Jones, Masters, for Plymouth, per receipts 13th  
“ and 29th March and minute 7th of January,  
“ 1780, viz. s. d.

Malt, 467 qrs. at 27 0 per qr.	-	630	9	0
Freight, - 2 0 ditto	-	46	14	0
Lighterage, met- age, portorage, &c. } 0 8 ditto	-	15	11	4
Commission, - 0 6 ditto	-	11	13	6
Discount and brokerage on Victual- ling Bills, at 1 1¼ per cent. }	-	89	5	9¼

£. 793 13 7¼

Dated at the Victualling-Office, London, 31st of March, 1780.



**Memorandum.**

“ Interest is to be allowed on this bill, at four  
“ pounds per cent. per ann. after six months from  
“ the date.

*Bates, J. Kirke, Thomas Colby.*

**WILLIAM ADAMS, Esq; sworn.**

**Examined by Mr. COOPER.**

**Q.** Do you know the defendant, Mr. Christopher Atkinson? **A.** Yes.

**Q.** Do you remember making application to him, for permission to send Malt, on his account, to the King's Stores at Plymouth?

**A.** I did apply to him.

**Q.** What was the nature of your application?

**A.** I applied to Mr. Atkinson for his order to send some Malt to the Victualling-Office at Plymouth, and give me such a price as he could.—At first there was an objection to the quality, as not being so good; but he afterwards allowed me to send it in.

**Q.** Did you make any agreement as to the price? **A.** The price was not fixed at that time, but when I came to town some time after.

**Q.** What quantity did you send in?

**A.** The quantity that was shipped was 252 quarters; but when it was measured, upon the delivery, it made only 250 quarters and one bushel.

**Q.** When was it delivered?

**A.** The latter end of March, 1780.

**Q.** You did not fix the price at the time of the delivery? **A.** We deferred fixing a price till I saw Mr.

Mr. Atkinson—I came to town in April, when I waited upon him.

Q. Was there no agreement between you, at the time you took the order? A. I was to have as much as he could afford to give—The market price for the time.

Q. You say you came to town and waited upon Mr. Atkinson, was there a price fixed then?

A. I came to town the latter end of April, or beginning of May—After some conversation with Mr. Atkinson, relative to the Malt, the price was fixed at 25s. per quarter.

Q. What vessel was the Malt shipped in?

A. The Providence, John Helmes, Master.

[*Postscript of a letter from defendant to Mr. Adams was read, which says, “ Your Malt made out “ only 250 quarters and one bushel, of “ which y u shall have account of sales in “ my next.”*]

Q. Who was at the expence of the delivery of this Malt? A. I paid the freight, and the charges of the delivery.

Q. So you had only 25s. a quarter for it, when delivered? A. I had 25s. and bore all the expences of freight and delivery.

*Cross examined by Mr. BEARCROFT.*

Q. This was a consignment of the Malt?

A. Yes.

Q. If by consignment it was not a sale?

A. I allowed him a commission.

Q. Then you had not sold it him, but merely consigned it, and he was to send you an account of the sale? A. Yes.

DIGGORY

DIGGORY TONKIN, Esq; sworn.

Examined by Mr. LAW.

Q. I believe you belong to the Victualling-Office, at Plymouth? A. Yes.

Q. Did you receive any Malt from Mr. Adams, on Mr. Atkinson's account? A. Yes—On the 27th of March, 1780, I received from Mr. Atkinson, by Mr. Adams, 250 quarters and one bushel of Malt.

Q. By what vessel did you receive this Malt?

A. By the Providence, John Helmes, Master.

Q. Where was it deposited? A. It was deposited in the King's Warehouse, at Plymouth.

Q. Did you give any, and what certificate, on receipt of this Malt? A. A certificate for the quantity signed by me, and other officers who usually sign the certificates.

[Produced copy of a certificate in the following words,]

“ These are humbly to certify the Honourable

“ Commissioners for Victualling his Majesty's

“ Navy, that Mr. Christopher Atkinson hath

“ delivered into these Stores his day, per

“ Mr. William Adams, as under, viz

“ Malt, two hundred and fifty quarters,

“ one bushel, which was good and fit for

“ his Majesty's service.

“ Dated at his Majesty's Victualling-Office,

“ Plymouth, this 27th March, 1780.

“ Diggory Tonkins, Wm. Crees, Alex. Gordon.”

Q. There was no bill of parcels? A. No, Mr. Adams's Clerk came with it himself.

Cross



*Cross examined by Mr. PECKHAM:*

Q. This 250 quarters of Malt were of very inferior quality? A. It was not very inferior.

Q. Had you any Instructions from Mr. Atkinson to mix some better with it? A. Yes—There was 213 quarters sent by Mr. Atkinson in the Carolina.

— GUNNELL, Esq; sworn.

[Produced a correspondence between Mr. Atkinson and Mr. Adams, which was laid before a Committee of the House of Commons; and Mr. Atkinson's account of sales of the 250 Malt, taken by Mr. Adams from Mr. Atkinson's journal, 1st May, 1780, and is as follows,]

Qrs.	s.				
250 $\frac{1}{8}$ Malt, at 25			312	13	0
Commission £6 5 0		Charges 3 15 0	10	0	0
			<hr/>		
			£. 302	13	0
			<hr/>		

*Mr. Solicitor General.* My Lord, it is a direct confirmation of the fact, respecting the 250 quarters of Malt, being purchased at 25s. a quarter, and charged, as has been proved, at 27s. besides freight, and other incidental expence.

*Lord Mansfield.* This takes in the whole of your case?

*Mr. Solicitor.* Yes, my Lord, your Lordship sees that on this article of Malt it makes a difference of 4s and 8d a quarter, which he charges more

more than what he paid for it.—I shall trouble your Lordship with another very strong case.

[THOMAS NEVILL, Esq; produced the following Bill of Parcels and Certificate (for Board's minute of May 28th, 1779, to which refer, see page 20.)

“ The Honorable the Commissioners for victualling his Majesty's Navy Drs to Christopher Atkinson for Wheat bought per their order of Board's minute, dated 28th of May, 1779, and delivered into the Stores at Plymouth between the 3d and 22d of Nov. instant, as per certificate annexed,

490	3	Qu.			
239	4	729	7	at 36s	£. 1313 15 6
<hr/>					
Commission	-	-	-	at 6d	- 18 4 11½
Discount and brokerage on					
£1505	2	2½	at 11½ per cent.		- 173 1 9
					<hr/>
					£. 1505 2 2½

Errors excepted

London, 27th Nov. 1779.

Per Pr<sup>n</sup> of C. Atkinson,

Wm. Henderson..

“ These are to certify the Honorable the Commissioners for victualling his Majesty's Navy, that Mr. Christopher Atkinson hath delivered into His Majesty's Stores here, per Mr. William Adams, between 3d and 22d instant as under, viz,

F

“ Wheat

“ Wheat, four hundred ninety quarters three  
 “ bushels, at 60lb per bushel  
 “ Ditto, two hundred and thirty-nine quarters  
 “ four bushels, at 59lb per bushel  
 “ Which was good and fit for His Majesty’s service.  
 Qrs. Bush.  
 490 3 Dated at His Majesty Victualling Office,  
 239 4 Plymouth this 23d Nov. 1779.

729 7 Digory Tonkin, Wm. Crees, Alex. Gordon.”

[GEORGE SWAFFIELD, Esq. produced a Victualling Bill, dated 30th of November, 1779, No. 2535, which was read, and was in the following words,]

“ MR. T R E A S U R E R.

“ Received the 30th Nov. 1779. N<sup>o</sup> 2535.

“ We pray you to pay unto Mr. Christopher Atkinson the sum of one thousand five hundred  
 “ and five pounds two shillings and two-pence,  
 “ for the Wheat, &c. as under-mentioned, by  
 “ him purchased and delivered into His Majesty’s Stores at Plymouth between 3d and 22d November, per minute 28th May, 1779, viz.

“ Wheat 729 quarters 7 bushels at  
 36s per quarter - - - - £. 1313 15 6  
 “ Commission 6d ditto - - - - 18 4 11½  
 “ Discount and Brokerage on Victualling Bills at 11½ per cent. 173 1 9

£. 1505 2 2½

C. Atkinson.

Dated at the Victualling-Office, London,  
 30th Nov. 1779.



“ Memorandum.

“ Interest is to be allowed on this bill at four  
“ pounds per cent. per annum after six months  
“ from the date.

*J. Bates, A. Chorley, Jonas Hanway.*

[*DIGGORY TONKIN, Esq; proved the receiving the  
Wheat, and giving the certificate, as per last page.*]

WILLIAM ADAMS, Esq; sworn.

Examined by Sir T. DAVENPORT.

Q. Inform the Court the price settled between  
you and Mr. Atkinson for this Wheat?

A. Thirty-four shillings and six-pence per quar-  
ter.

Q. Was there any bargain made between him  
and you? A. We examined the accounts at  
Mr. Atkinson's house; upon comparing the ac-  
counts, they perfectly agreed both in price and  
quantity; 729 quarters and 6 bushels, was what  
I settled for, at 34s. 6d. per quarter.

*Cross examined by Mr. SERJEANT BOLTON.*

Q. What time was it when you settled your ac-  
count of this Wheat?

A. The first or second day of December, 1779.

Q. Before that time you knew nothing what you  
was to have for it? A. No; I did not.

THO. NEVILL, Esq. Q. Have you endeavoured  
to find a Bill of Parcels delivered to your office by  
Mr. Atkinson? A. We have been searching for this  
week, but have not been able to find it.

[GEORGE SWAFFIELD, *Esq.*, produced *Viċtualling Bill*, No. 1531, dated 20th of June, 1780.]

Q. [To Mr. Nevill.] Did you not make out Viċtualling-Bills agreeable to bills of parcels delivered into your office by Mr. Atkinson with a certificate. A. Yes.

Q. Look at that Viċtualling-Bill, No. 1531, for Pease. Was the bill you now look at made out in consequence of a Bill of Parcels delivered by Mr. Atkinson, and agreeable thereto? A. Yes.

[*Viċtualling-Bill read, and was in the following words:*]

“ Mr. T R E A S U R E R.

Rec. June 20, 1780. No. 1531.

“ We pray you to pay unto Mr. Christopher  
“ Atkinson the sum of one thousand and seven  
“ hundred thirty-one pounds nine shillings and  
“ four-pence, for the Pease, &c. as undermen-  
“ tioned, by him purchased and delivered into  
“ his Majesty’s Stores at the Red-House, Deptford,  
“ between 5th and 17th June, per minute 5th  
“ January, 1780, viz.

	Qurs.	Bush.	s.		£.	s.	d.
Pease	306	4	at 34	per quarter	521	1	0
	627	4	at 30	ditto	941	5	0
					<hr/>		
	934	0			1,462	6	0

Fillage, portorage, metage, lighter-

age, &c. 1s. ditto - - - - - 46 14 0

Commiffion, 6d. - - - - - 23 7 0

Discount and brokerage on viċtual-

ling-Bills, at  $11\frac{1}{2}$  per cent. - - - 199 2 4 $\frac{1}{2}$

---

1731 9 4 $\frac{1}{2}$ 

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Dated at the Viċtualling-Office, London,  
20th June, 1780.

“ Memorandum.

“ Interest is to be allowed on this bill, at four pounds per cent. per ann. after six months from the date.

*Jonas Hanway, A. Chorley, J. Slade.*

EDWARD HOPKINS sworn.

Examined by Mr. COOPER.

Q. Are you a Corn Meter? A. Yes.

Q. Do you remember measuring, on the 13th of June, 1780, 97 quarters four bushel of Pease, out of Capt. Cram; and also, on the 15th, 40 quarters. A. I do remember.

Q. To whom did you deliver them? A. To Mr. Knight, Mr. Atkinson's lighterman.

J. SMITH sworn.

Q. Are you a corn-meter? A. Yes.

Q. Did you measure any Pease, the middle of June, 1780, out of Captain Cram? A. Yes—160 quarters—172 quarters four bushels—and 157 quarters four bushels.

Q. Who did you deliver them to? A. Mr. Knight, Mr. Atkinson's lighterman.

WILLIAM BATSON sworn.

Examined by Mr. SOLICITOR.

Q. Where do you live? A. At Newcastle upon Tyne.

Q. Did you at any time send a quantity of Pease to Mr. Atkinson? A. Yes, in the month of May, or beginning of June, I sent three parcels of Pease to Mr. Atkinson.

Q. Was any of them sent by Capt. Cram.

A. Yes, by Capt. Jonathan Cram, measuring 627 quarters, and four bushels.

Q. Did Mr. Atkinson send you afterwards, any account



account of the sale of this cargo? A. Yes, on the 24th of June, 1780.

Q. What price did he affix? A. The price he sent was 28s. 6d. per quarter.

Q. Was that the whole sum that ever you received for those Pease? A. Yes, that was all.

[Account of sale produced, which was in the following form. The first account is for those Pease.]

Sale on account of Mr. William Batson, per Cram.

Qrs.		£.	s.	d.
627 4	white Pease, at 28s. 6d.	894	3	6
	Freight, &c.	£. not pd.		
	Custom-house, entry, & fees	2	1	6
	Metage,	11	15	5
	Landing, sorting, packing, and re-shipping	1	1	0
	1378 bags, and 100 matts,			
	Commission	23	10	8
	Nett proceed	£. 855	14	11

Sale on account of ditto, per Renwick.

Qrs.		£.	s.	d.
524 4	white Pease, at 28s. 6d.	747	8	0
	Cash paid Renwick, on account of freight,	60	0	0
	Custom-house, entry, & fees	2	1	6
	Metage,	9	16	9
	Landing, sorting, packing, and re-shipping	1	1	0
	1167 bags, and 140 matts,			
	Commission	19	13	5
	Nett proceed	£. 654	15	4

Errors excepted. London, 24th June, 1780.  
Chr. Atkinson.

Q. By Mr. Peckham. These Pease were a con-  
signment to Mr Atkinson? A. Yes, they were-

[THOMAS NEVILL, Esq; produced a bill of parcels  
and certificate annexed, which was sent into the  
Vitualling-Office by Mr. Atkinson, No. 1324,  
dated 25th of June, 1779, which was read, and  
are in the following words,]

“ The Honourable the Commissioners for vie-  
“ tualling his Majesty’s Navy Drs. to Christopher  
“ Atkinson, for Malt bought per their order, of  
“ Board’s minute, dated the 28th of May, 1779,  
“ and delivered between the 25th May and 15th  
“ June, viz,

Qrs.		£.	s.	d.
733	3 Malt, at 29s. 6d.	1081	14	6 $\frac{3}{4}$
Lighterage, metage, } portorage & shoot <sup>g</sup> }	at 9d.	27	10	0 $\frac{1}{4}$
	Commission - at 6d.	18	6	8 $\frac{1}{4}$
Discount & brokerage on £.1268. }		141	2	10 $\frac{1}{4}$
14s. 1d. $\frac{1}{2}$ at 11 $\frac{1}{8}$ per cent. }				
		<hr/> 1268 14 1 $\frac{1}{2}$ <hr/>		
Errors excepted.		<hr/>		

Chr. Atkinson,

“ Hartshorn Vitualling-Office, June 15, 1779.

“ Then received of Mr. Christopher Atkinson,  
“ for the use of his Majesty, by order of the  
“ Commissioners

" Commissioners for victualling his Majesty's Na-  
 " vy, as under-mentioned, viz.

1779.

Qrs. Bush.

25 May, received	100	0	} Close dried Amber
29 ——— received	49	3	
3 June, received	97	2	
——— received	117	4	
15 June, received	197	0	
——— received	172	2	} Malt, seven hundred and thirty-three quar- ters and three bushels, good and fit for his Majesty's Service, and answerable to the Board's Minute of the 28th of May, 1779.
Qrs. 733 3			

Charles Frankland.

John Raymond.

[GEO. SWAFFIELD, Esq; produced the Victualling-  
 Bill, No. 1324. for £. 1268. 14s. which had  
 been paid to Mr. Atkinson, which was read, and  
 is in the following words.]

" Mr. TREASURER.

Rec. June 29, 1779. No. 1324.

" We pray you to pay unto Mr. Christopher  
 " Atkinson, the sum of one thousand two hundred  
 " sixty-eight pounds fourteen shillings and one  
 " penny, for the Malt, &c. as under-mentioned;  
 " by him purchased and delivered into his Majesty's  
 " Stores



" Stores at London, between 25th May and 15th

" June, per minute 28th May, 1779, viz.

	Qrs.	Bufh.		£.	s.	d.
Malt	733	3	at 29s. 6d. per qur.	1081	14	6½
Lighterage, meetage, portorage,						
and shooting, 9d. ditto	-	-	-	27	10	0½
Commiffion, 6d. ditto	-	-	-	18	6	8½
Discount and brokerage on Vic-						
tualling Bills, at 11½ per cent.	-	-	-	141	2	10½

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1268 14 1½

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*Chr. Atkinson.*  
*Geo. Fletcher.*

Dated at the Victualling-Office,  
London, 29th June, 1779.

" Memorandum.

" Interest is to be allowed on this bill at four  
" pounds per cent. per annum, after fix months  
" from the date.

*Jonas Hanway. J. Kirke. J. Slade.*

Mr. MITTON, sworn.

Q. Did you sell any quantity of Malt to Mr.  
Atkinson about May, 1779? A. Yes, on the  
28th of May, 1779, I sold him 58 quarters.

Q. At what price? A. At 26s. 6d. per quar-  
ter—on the same day I sold him 40 quarters, at  
the same price—likewise 50 quarters and 67  
quarters and one half, all at the same price.

Q. Did you sell these to his clerk? A. Yes.

Q. Who paid for them? A. I was paid by a  
draft from Mr. Atkinson on his banker.

CALEB BROWN, sworn.

Q. I believe you are a corn meter? A. Yes.

G

Q. Do

Q. Do you remember the delivery of this Malt of Mr. Mitton's to Mr. Atkinson?

A. Yes, there was 67 quarters—50—40—and 50, delivered to the lighterman for Mr. Atkinson. [*The Meter's Bill produced to him.*]

Q. Is this your hand writing? A. Yes.—[*The Meter's Bill in the following form.*]

Brook's Wharf, May 28th, 1779.

Mr. Mitton, to Mr. Atkinson,  
67½ quarters of Malt, measure  
50 ditto, wts. one gt. per qr.

---

117½

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per

C. Brown, Sworn Meter.

THOMAS GRAY, sworn.

Q. Did you at any time sell Mr. Atkinson a quantity of Malt? A. Yes, on the 3d of June, 1779, I sold him 200 quarters of Malt, at 26s. per quarter.

Q. Do you know who was the meter?

A. No, I do not.

[*James Abbott the Meter, was called, who said, he measured 200 quarters of Malt; the Malt was delivered to a man who works for Mr. Atkinson.*]

Q. You don't know from whom the Malt came?

A. No, it came in a barge to Queenhithe, the Meter's bill was produced to him—he said, that Mr.

Mr. Gray was the seller, and Mr. Atkinson was the buyer? [*The Meter's Bill in the following form,*]

Brook's Wharf, June the 14th, 1779.

Mr. Gray, to Mr. Atkinson,  
200 quarters of Malt, wts. five quarts. per qr.  
per James Abbott, Sworn Meter.

Q [*By Mr. Peckham, to Mr. Mitton.*—I think you said, you delivered to Mr. Atkinson, 58—40—50 and 67 quarters and 1 half of Malt; was that all you sold him?

A. It was all at that time.

Q. Was there any soon before or after?

A. Yes, I delivered 160 quarters on the 25th.

MONTAGU BURGOYNE, Esq; one of the Commissioners of the Victualling-Office, proved, that he took the meter's bills from the king's file with his own hands.

JAMES DRUMMOND of the Victualling Office, produced the book in which all the Malt delivered to the King's Brewhouse, London, is entered, which agreed with the meter's bills produced.

JAMES HUME of the Victualling Office, corroborated that evidence.

## D E F E N C E.

Mr. Bearcroft. May it please your Lordship, and you Gentlemen of the Jury, being in the painful situation in which I am, I cannot rise up to defend a man of Mr. Atkinson's rank and



*station, a man of fortune, a man of character and reputation, A MEMBER OF THE HOUSE OF COMMONS, beloved and respected by many FRIENDS, a tender husband and an affectionate father, without trembling, when I think of such an attack as this upon his character; the consequences are serious and heavy indeed, and it is necessary that every part of this cause should be perfectly understood by every man who has a share in the determination of it. Permit me to ask every one of you twelve Gentlemen, have you been able to pursue, comprehend, and follow every part of the evidence that has been given?—This is a business complicated in its nature. Are we acquainted with it? Are we thorough masters of the subject?*

Gentlemen, I should feel no alleviation from the disagreeable situation which I am in were it not for the candour of Mr. Solicitor General, who on this occasion has done honour to himself, by his fairness in this prosecution, in endeavouring to do justice to the Publick. He has said, that unless you are satisfied, that by the overcharge of these articles which have been proved, that he cheated and defrauded the Publick, by putting money in his own pocket which he had no right to do, he could not ask you to convict him of perjury.

Gentlemen, the question in this cause, as it is in all charges of perjury, are these; what has the defendant sworn to? What did he mean at the time of swearing? How did he understand it?—Take him as he means. The second question is, has he sworn false?—But the fact, tho' it is false, yet it does not follow that a man is guilty of perjury, for the emphatical words in all charges of this nature are, wilful and corrupt perjury; the most honorable

able man, who pays the strictest regard to truth, may state in words that which may turn out to be false, but not a colour for a charge of wilful and corrupt perjury.

Gentlemen, to decide on a fellow-subject, charged with a crime of this nature, you should never forget that it is necessary for you, before you form an opinion, to have the whole case, that you may be able to collect the intention and meaning of the defendant.

Gentlemen, though I acknowledge the candour of my learned friend, yet I cannot help observing, that there was too much affectation of solemnity at the outset of the business. Mr. Atkinson is a very unfortunate man, has laboured under the heavy charge of a prosecution for perjury above a twelvemonth;—I don't state this as the fault of any body, neither do I reflect on the officers of the Crown, after the candour and liberality shown, but I state it as a hardship, a very great hardship to himself; he pleaded to the Indictment; he gave notice of trial, and did *every thing in his power* to bring the business to a conclusion. I have the highest opinion of the Attorney General's conduct in the proceedings, because he thought there was something cruel in such a charge; yet from what had transpired, his duty to the Publick required him to proceed, the moment he saw a foundation for such a charge; and that the matter should be investigated, he proceeded on the first Indictment; he saw the *extreme hardship* and the *little ground* for the charge, granted a *noli prosequi*; he did what was right, what was just, and what was proper, that *prosecution* being so at an end perhaps there would have been no *injury* to the Publick had it  
never



*never been revived.* Gentlemen, Mr. Atkinson stands upon his trial at the instance of the Crown, and tho' the trial is conducted by the officers of the Crown, yet in truth the *prosecution* is by Mr. BENNETT, who is the bitter enemy of Mr. Atkinson, and who has openly declared *he would never leave him till one of them fell*, because Mr. Atkinson discovered a fraud committed by Mr. Bennett on the Victualling-Board, which occasioned his being turned out of his *employment*.——

Gentlemen, Mr. Bennett had written some paragraphs in the papers, charging Mr. Atkinson with various frauds in his dealings with the Victualling Board; indeed what has been attempted to be proved are *but small sums*, when I state the great dealings he had with the Victualling-Office, such *trifling mistakes* are not to be wondered at. Had Mr. Atkinson any conception of a fraud being committed, he never would have subjected himself to a charge of this nature. Did you ever know an instance of a man being guilty of an offence, dare to come into a Court of Justice against his accuser, knowing himself to be guilty; but being sensible of no fraud being committed, his own innocence urges him to clear his REPUTATION. Mr. Atkinson did proceed against Mr. Bennett; he *brought an action in the Court against him*—the application to the Court was for leave to file an action against him for a *libel*; if the party cannot show even probable grounds, the Court spurns at such an application, and say, we will not interfere to assist a man where the facts do not appear to be well grounded. Applications of this nature must be always upon affidavit, and what Mr. Atkinson swore in that affidavit, is the ground on which



which this prosecution is brought.—Mr. Atkinson took the ready way for the *investigation* of the fact, satisfied in his own mind that he had been guilty of no *injustice*, nor committed no fraud on the Publick.—Mr. Atkinson was always ready to complain, and expose any frauds he knew committed on the Publick.

Gentlemen, the reason why the Clerk of the House of Commons had these papers, which have been introduced, is this, there was a long examination of Mr. Atkinson's conduct, respecting his transactions with the Victualling Office, before a Committee of the House of Commons, appointed for that purpose; they reported the facts, and *content themselves* with that report: now even his bitter enemies, not daring to proceed, is an evidence of his innocence; for if they had thought from that examination, any *criminality* had appeared, he would undoubtedly have been proceeded against.

Gentlemen, the question before you, and which you have to try, is he guilty of this charge now brought against him, or not? I said that the first consideration for the ~~Jury is,~~ what has the defendant, who is charged with perjury, sworn? And it will be necessary for you to attend particularly to the words sworn; they must be taken in their plain and obvious meaning, without any forced construction; the learned hand who drew this Indictment, and I know no one so capable as himself, has thrown in no inuendoes, but states them as in the Affidavit itself; but I think I could trace something that may be mistaken; however this observation will be better understood when I have stated the words of the Affidavit: it begins with  
stating

stating that " a printed libel against him had been  
 " published by Bennett; then what Mr. Atkinson  
 " understood to be Bennett's meaning."—You  
 will see what he apprehended his charge to be, he  
 says, by the publication this deponent believes,  
 &c. by which it is manifest that he thought, that,  
 " Bennett means to charge me with a fraud upon  
 " the Victualling-Office, by taking a larger price  
 " for Grain than I had a right to."—I shall tell  
 you what I mean by taking notice of this, for it is  
 very important.

Gentlemen, we have got thus far what Mr. Atkinson believed to be Bennett's meaning.—I have a right to prove, and I am sure the words of the Affidavit, on which the words of the perjury is said to be founded, will bear me out; that no such *construction* ought to be put upon them as is *contended*, " And this deponent saith, that in his  
 " transactions with the said Commissioners, that  
 " he charged 6d. per quarter for all Malt and  
 " Grain supplied them, and that he never did at  
 " any time, during his transactions with said Commissioners, charge more than 6d. per quarter,  
 " beyond the price he actually paid for it." Now let any candid man, with common sense, look at this, (*if Mr. Atkinson did not mean to split things,*) I say, let any man, possessed of common sense, observe the distinction; the Malt and Grain *supplied*, and that which was purchased for their use, are totally distinct; so much so, that it begins a new sentence. " I never charged above 6d. a quarter more than what I actually paid for it."

Gentlemen, I am grossly mistaken, if I cannot show you with clearness, that in truth and in fact,  
 no



no grounds for this charge ever existed, and that he never charged more upon balance.

Gentlemen, Mr. Atkinson was undoubtedly one of the first corn-dealers in Europe, his dealings in corn were of various kinds; there never was a corn-factor that served Government, but dealt likewise on his own account; sometimes he purchased by commission, sometimes he is the seller.—With respect to the Victualling-Office, sometimes they bargained with him, at other times they gave him his commission; that is a bargain and sale, when they say I'll give you so much for such a quantity of Grain: but there is a third way, that is, that he bought Grain of himself for the Victualling-Office, and charged it at the common market-price, at the time of the delivery. It appears from a *book that he kept*, that a vast number of articles which are set down, are in this way; the book which contains this was in the hands of every Commissioner, they knew what he charged, they likewise had an opportunity of knowing the market-price.—But it may be said how can this be, if they do but ascertain the market-price, which is all that he has charged?—This kind of dealing is called supplying.—The price that was charged, was never the price that was actually paid, but was governed by the market-price; he could do nothing but say, I never charged more than was actually paid, and that was the market-price.

Gentlemen, I trust we have got the length of understanding this part of the Affidavit.—The next thing for your consideration is, whether any of the assignments of the perjury, and from the evidence before you, whether it appears any part of

H

the



the Affidavit is false.—Weighing that evidence, and the evidence which I shall produce, you will find it strictly and literally true, that the words in the Affidavit only go to that transaction of *supplying* the Victualling-Office.

Gentlemen, I beg your pardon if I seem to be tedious, but when you consider the situation I stand in, the *honour*, the *character*, and the *reputation* of my client being at stake, you will give me your indulgence.—I shall now examine the evidence which has been laid before you, in support of this charge; certainly it has happened, but for what reasons I know not, they have not taken the course pointed out for them; they have not pursued the line the drawer of the bill intended they should, for they begin at the middle, then they go to the end, and from that to the beginning.—I can account for it in this way, they thought it most prudent to set their best foot foremost.—You will remember that I stood up to make an objection to this mode of proceeding.—I have no difficulty to declare, that, when a man is charged with a crime of this nature, I think it my duty to defend him to the best of my power.—My heart tells me that Mr. Atkinson is *innocent*.—I ought to have my gown stripped off, if I did not do all I could to rescue the character of an *innocent* man.

Gentlemen, the charge to which they have first brought evidence is in the 4th and 5th assignment.—They vary, but in truth they are the same, and must stand and fall together.—The charge is this; that Mr. Atkinson, as cornfactor to the Victualling-Office, did charge more upon a quantity of Malt than he had actually paid, and that he charged 2s. per quarter for freight;—where is this word in the Affidavit?

Affidavit?—That he charged more than 6d. per quarter as allowed him for commission, and he charged 4s. 8d. for 250 quarters of Malt, more than he paid Mr. Adams.—The defendant, Mr. Atkinson, has sworn that he never charged more than his commission, above what he paid.—With submission to my Lord, that it is not the same in the assignment as in the Affidavit, and that it ought to be in the very words of the Affidavit.—I make the remark because I think it important, for the very drawer of the indictment was conscious, that this was for freight;—where will you find this mentioned?—You must see it in the face of the Affidavit.—If therefore they could prove, that there was 2s. more charged in this article, I beg leave to say that it will not make him guilty of perjury.—They are not satisfied with this, there is another Count adjoining of a similar nature.—It will be said you charge 27s. and 2s. for freight, when you purchased for 25s.—It is true that the freight was charged, but there is not evidence to go upon to prove that it was paid.—It is something surprising, that in all his dealing with the Victualling-Office, they can only bring this single instance of something like an overcharge;—I stand up for my client's honour, and I am sure you would never blast a man's reputation from the magnitude of the dealings which he had with the Victualling-Office if there was only this *single instance* to be found.—But, Gentlemen, I'll give you another instance, why this, being the only instance, is owing to the neglect of the Clerks. With respect to the freight, which is said to be overcharged, all this being by special agreement, he always understood that he was entitled to two shillings

lings a quarter for freight, and eight-pence for other charges attending the delivery. This is what was always understood by Mr. Atkinson's Clerks, *if they speak true*; he knew nothing of this, but by *them it was charged* in the usual way. But, Gentlemen, it will be said how came you to charge 27s. when you only paid 25s.—My answer to Mr. Solicitor is from Mr. Adams himself, that this Malt was of an inferior quality; where is there a man in the country that will bind himself, or any man belonging to the Victualling-Office, or that ever served them, can send such large quantities of an equal quality, some will not be so good as others; Mr. Adams himself acknowledged that it was so, and it will appear that there was Malt of a superior quality sent to mix with it; that the whole might be of that goodness which was agreed for. And I am told if those who succeeded Mr. Atkinson had been contented with doing no worse, and acted as fairly as he did, the Publick would not have been so much injured. The fact was, that this Malt was mixed. In all great dealings of this nature, it is the customary way to state the whole at an average price. Twenty-five shillings was the price given for this, the other was considerably more; being mixed together, they were charged at the average price of 27s.—Gentlemen, thus it is that I answer the first charge; you remember what I said about the freight, that it was owing to the mistake of the Clerk.

Gentlemen, we now come to the next charge.—I cannot say but I rejoice that they brought this forth, for it shews the *spirit* of the *prosecution*, and from what *motive it proceeds*. My learned friend



friend will not think that I allude to him, but they knew, of their own knowledge, there was a complete answer to this. *The prosecutor thought with himself, I'll go to the Crown-Office, if I can but get an indictment against him, if I can injure him in the good opinion of the world, I can get my revenge.—Says Mr. Bennett, I'll make his Family sleepless nights, and uneasy days, then I will have my revenge.—*The next charge that they go upon is, this separate assignment; I mean to strip it of all law-terms, and state it as it really is, seven hundred and twenty-nine quarters and six bushels of Wheat was purchased from Mr. Adams, where they say there is an overcharge of one shilling and six-pence a quarter, I admit the fact; it appears by the evidence they produce, but I will give an answer to this; an answer which they must know is the compleatest that can be given; I beg your attention to it, it is one of the *mysteries of the Corn-Trade*, and that which I have just now learnt.—When money is wanting, it is impossible for them to give in an exact account; they deliver the quantities that are wanting at particular times, these taken from larger quantities, it is impossible for them to state the precise price; they get a bill for such a sum of money, ninety-nine out of a hundred of those bills and charges are in this way, it is but the hundredth that is right, some are under, and some above.—A certain quantity is purchased, and is sent in by the purchaser, the seller wants money, (the person supplying the Victualling-Office) he states a *fancied price, never the market price, sometimes a little above and sometimes below.*—How do they come to make out the real charge; they look at the invoice, which perhaps consists of a hundred parcels, if  
upon

upon casting up the whole, they find an overcharge in the first article, they make it right in the last, or deduct that overcharge from the last article.—If they bought a hundred parcels at different prices and received eighty or ninety pounds for one, they look upon the whole, and see what is the exact amount of the different parcels.—This quantity contains so many bushels, I had ninety pounds which is more, it's something of an overcharge, I'll contrive at the last to get that deducted.—I am sure they know that this is the practice; all his Counsel have seen it, and it's the usual way of conducting that sort of business.—Gentlemen, a charge of this kind that strikes so strongly at the *character* of a man, and of every thing that is dear to him, supported by such evidence, cannot but surprise you, as the *prosecutor* must know that the balance bill is that which corrects any mistake that might have happened in the course of the business. From this you will see the *spirit of the prosecution*, that it was solely to *harass, perplex* and to *deceive*.—This will be a compleat answer to the charge of the seventh assignment.

The Gentlemen were not contented with what they had proved, but would go on to another charge; with respect to the Pease, six hundred twenty-seven quarters, four bushels; the charges made the 20th of June, 1781. Is it a transaction of such a nature that any charge can be made; going to buy a quantity of Pease for the office; settling the price with the seller; and charging more to the Victualling Board? Or is it, what I call a supply. The witness says, that they were consigned to Mr. Atkinson—It's not a quantity purchased

purchased on a promise to give a price, and afterwards charge more, what does he give to the other man—There is a confidence reposed by every *consignor in his factor*, I transfer this quantity, *reposing in you*, the person to whom it is consigned, it is his own, *to return him the market price*; he may either keep it himself, or he may sell it to any other person; that was the case with these Pease, and were of that sort, what I call a supply.

Gentlemen, they are not content to stop here, but they have gone back to some of the first charges, wandering from the middle to the last, and from the last to the first; if it answers no other purpose, it will tend to puzzle and perplex. But, I can furnish a compleat answer to this charge—If I see something slovenly in my learned friend, in conducting a cause, it's a sure sign that his case is weak.—In this, they say we have a right to charge you with perjury, for you purchased of Thomas Gray a quantity of Malt, which you have charged more for than what it cost; first of all, I am not sure whether they are entitled to an answer, or not; however, I shall state the answer, Mr. Atkinson often bargained with the Victualling Board, for particular quantities of Malt, at a certain price, at one time he bargained for no less a quantity than 14,000 quarters, at the price of 30s. a quarter, to be delivered into the King's Stores, in London, and at Plymouth; soon after, it was first seen, that a *greater quantity* of Malt was wanting in London, it was proposed to Mr. Atkinson, by the Commissioners, to furnish them with 1300 or 1400 quarters more; at that time, Mr. Bennett was *abusing* Mr. Atkinson and every  
body



*body else about the Victualling-Office: they were not such good friends then, as I understand they are now.* Mr. Atkinson charged for this Malt a lumping sum, and including his commission, lighterage and so forth.—It occurred to the Commissioners themselves, that Mr. Bennett *made an advantage of his charge in the newspapers*, representing that he took 31s. instead of 30s. The Commissioners saw that this was totally false; they said Mr. Atkinson charged 29s. 6d. a quarter, and 6d. for the commission.

Gentlemen, they have read a vast variety of orders from the Minute-Book of the Commissioners—in reading one order they omit another; *they knew that this was important, therefore omitted it.* It was upon the 28th of May, 1779, they read an order, *under which this was bargained and sold, 1500 quarters of Malt: they read it in such a manner, as if it was an order to purchase by commission.* They will contend, that this is an order for purchasing by commission, *but if you will be so good as to attend to it, and to the whole of the transaction, which will shew you beyond all doubt that it was a purchase, not on commission;* that he never charged more than 29s. 6d. They take that order which imports a purchase treated for; treated it as an actual purchase, and yet upon this they pretend to make an overcharge.

Gentlemen, if this is contended for, you will see that the very first article of the delivery is two days before accompanied with others subsequent to the 28th. 'Tis impossible to distinguish that which was delivered before that date, from that which was delivered afterwards, being under the same order; it was constantly treated by him, and by his

his masters the Commissioners, that it was under the same orders.

Gentlemen, on this occasion, on a subject of this nature, *what he said to his Clerk will be evidence*, though I am perfectly aware, that what one man says to another, cannot be evidence against a third person; yet, upon such an occasion as this, what he says, at a time he could have *no view of serving any purpose whatever*, when *no charge was against him*, I trust my Lord will permit it to be given.

Lord Mansfield. What he said to his Clerk, cannot be evidence.

Mr. Bearcroft. Gentlemen, Mr. Henderson, the Clerk, and all the Clerks in the office, treated it as part of the 1500 quarters, in addition to the 14000 which he had agreed to furnish. Gentlemen, I shall call some of the Commissioners—I do not expect *a great deal from them*; but I have a right to ask them, if they have not a recollection of the bargain: I am in hopes that the *effect and force of an oath*, will extort from them the recollection of this circumstance. If this be so, which I am satisfied it is, I have answered all the several charges attempted to be proved; I have done what I ought to do, rescued the honour of my client, and saved him from this *malicious attack on his REPUTATION*.

Gentlemen, the only question that remains is, has he been guilty of wilful and corrupt perjury. I have this to say, that I will prove him to be a man of *great character and worth*, a man of *fortune*, a man of *strict probity and justice*. In a charge of this nature of a vile and base crime, if the scale were to stand, *character ought to give it in his favour*.

Even supposing that every thing sworn is true, if it appears upon the whole that there was no overcharge, or even that that overcharge was without his knowledge, by the mistake of his clerks, that character which I shall produce will incline you to *acquit him*. My learned friend wished we might make his innocence appear; that it was only a mistake; that the Publick was not injured. The fact is, where we charged what we did not pay upon some articles, we made charges less than what we did pay upon others, so that upon the whole he charged no more than what he paid,

Gentlemen, it will appear to you that this Indictment is most *improperly preferred* against the Defendant; when the gentlemen who are concerned for the Crown saw the face that was put upon this business they very properly took it up, but though it is at the instance of the Crown, *it is to revenge the cause of Mr. Bennett*. Gentlemen, put the case home to yourselves; consider the extensive dealings which Mr. Atkinson had with the Victualling-Board, to the amount of five or six hundred thousand pounds; that they only found out one or two charges, of what they call an overcharge. Is it possible that Mr. Atkinson would take a false oath to bring his bitter enemy to justice, because he must know that he must lay himself open to a *man who was endeavouring to take every advantage of him*. Gentlemen, I do not think you will consider me wasting your time in supporting the honor, and every thing that is dear in life to Mr. Atkinson. Mr. Atkinson is a man *diligent in his business*, keeps many clerks to transact his business, and for the first three weeks he had not the means of knowing what the price of this Grain was.

That



That upon this and upon all other transactions the clerk had the management; no directions from him to make any overcharge, but from time to time they made the charges; he was *very careful of the charges* as he knew he was *watched* by this Bennett, that he would be glad of an opportunity to traduce him.

Gentlemen, I commit the whole of the case into your hands; I believe I shall prove to your satisfaction, that what he swore is *strictly true*—if not it was only a *verbal falsehood*, a mere *mistake*.—Gentlemen, I sit down in full confidence that you will give a just verdict, and that that verdict will release him from the *misery he has been in for some time past*.

WILLIAM HENDERSON, sworn.

Examined by Mr. PECKHAM.

Q. I believe you lived with Mr. Atkinson in the year 1780.

A. Yes; I lived with him for five years.

Q. In what capacity was you then in?

A. I was his first clerk.

Q. During that time what might be his returns?

A. I can't exactly say; but to several hundred thousands a year.

Q. During that time did he desire you to fix any prices upon corn sent to the Victualling-Office? A. Yes; he desired me to be *careful*, and *fix no more than the market price*.

Q. I must ask you to explain a few terms. What is meant by a bargain when applied to a cornfactor? A. Buying at a certain price; a man

buying in the market for himself when he made a bargain at a certain fixed price.

Q. Before Mr. Atkinson dealt with the Victualling-Office by commission, his dealings then was that which you call a bargain. A. Yes.

Q. What is the meaning of *supply*?

A. Fixing the price. *When I take his own Corn, or that sent him by consignment, we always call it supplied.*

Q. When you deliver to the Victualling-Office any Corn of his own, or that which was consigned to him, you call that supplied? A. Yes.

Q. By what mode did you fix the price of this Corn which you call supplied?

A. We were always large buyers of Corn every market-day. We took our corn; the samples for the Victualling-Office the same as that which was sent us by consignment; we fixed one general price upon the whole.

Q. When you delivered Corn to the Victualling-Office that was consigned to you, or Mr. Atkinson's own Corn, were they not mixed together, and could not tell what he gave to each person. A. Yes.

Q. Was it not by the price of the *market-day* by which he was regulated?

A. *Yes, we were guided by that.*

Q. What do you mean by the word purchase, when applied to the Victualling-Office?

A. Corn purchased of other people for the Victualling-Office.

Q. When you did so, did not you charge the Victualling-Office the same as you gave for it?

A. Always, exactly the same.

Q. Now there was a bargain made for a quantity of Malt in the year 1779, and was delivered at Ply-

Plymouth—Do you know of a quantity that was sent from London to be mixed with it?

A. Yes, there was a quantity, 1215 quarters, *that was coupled with it* and charged to the Victualling-Office.

Q. Was it that which was sent to Plymouth by Mr. Adams; was it purchased, or what you call a supply?

A. It was a consignment, and we considered it as a supply.

Q. Was there a price fixed at the time of delivery? A. No, it was a consignment.

Q. Was there any commission allowed by Mr. Adams for this Malt?

A. Yes, six-pence per quarter.

Q. Does not this make it a supply? A. Yes.

Q. If you buy out of the market, you call that a purchase? A. We do.

Lord Mansfield. If you *sell it to the Victualling-Board*, you don't charge six-pence commission to the Victualling-Board? A. *We do.*

Q. [By Mr. Peckham.] Now, Sir, as this Corn was sent from Tonnets to Plymouth, and consigned to you, there must be some mode of fixing the price; was you present when this happened.

A. Yes, I was present when the price was fix'd.

Q. Was there a *sample* of it?

A. Yes, I took the *two samples that were there*, and made what I call a fair price, I took an equal sample of each, mixed together, and I fixed it at 27s. a quarter.

Q. Would the two, fixed at this price, make, it a fair average upon the whole?

A. I thought it so.

Q. Was that which you sent down of a superior quality to that which Mr. Adams sent in; whether



whether it was purchased or taken out of Mr. Atkinson's *own warehouse*?

A. It was the best *that could be got*, but I don't recollect of whom he had it.

Q. Is that 8d. a quarter a fair charge for the delivery?

A. If we pay the charges of delivery, it amounts to that.

Q. Was there any order from the Victualling-Office to charge 2s. a quarter for freight of Malt to Plymouth? A. Yes, an order was made on the 26th of November, [*the Order produced.*]

“ ORDERED, That Christopher Atkinson, Esq; be allowed the under-mentioned prices in future for freight, (viz.) on Wheat to Plymouth, 2s. 6d. and on Malt 2s. a quarter.”

Q. Do you know an instance of Malt being delivered free of freight?

A. We always charge 2s. for freight to Plymouth. [*Read from a paper.*]

“ Two hundred and fifty quarters of Malt, delivered at Plymouth.”

Q. Should you be intitled to 2s. a quarter, on that 250 quarters of Malt, if the consigner had not paid it? A. It was certainly a mistake, it being sent in free of any charges.

Q. Had Mr. Atkinson any thing to do with, or any knowledge of that charge?

A. No; it was *my own mistake, he knew nothing of it*; nor did I, till last year when we were before the Committee of the House of Commons.

Q. Will you explain to the Court, the nature of a *balance bill*?

A. We

A. We have a book, called the buying book, which contains in it, the names of the persons of whom the Corn is bought, and the exact sum paid for it; from this book we made a settlement once a month or twice a month, when we make out the balance. — We bought Corn of a vast number of people, *which was all put together*; when the Victualling-Office wanted a certain quantity, it was taken out of the *aggregate bulk*; we then put a nominal price upon it, at that time it was impossible to tell what it cost us, but we charged a medium price; we go on in this way, till *we get the Granary nearly clear*; we never consider the charge given in, in any other light than to get *money on account*.

Q. You cannot get bills at the Victualling-Office, without fixing some price?

A. No, when we get the *Granaries nearly clear, working the whole by the Rule of Three*, we get a price fixed — What is deficient or overcharged, is added or deducted from the last line; Mr. Atkinson *got nothing nor lost nothing*, these invoices make the exact sum to a farthing — This is the particular price paid to each man, and by whom it was consigned; this is both a purchase and supply, the exact price is here. —

Q. Then all this quantity thrown together, you don't settle the balance, nor cast up what you pay for it, till the granaries are clear?

A. No.

Q. [By Lord Mansfield.] How do the Commissioners know this — Do you send your buying-book to the Commissioners at the Victualling-Office? A. Yes, I have taken it to the Board, it has been sent to them, I have carried it several times.

[Q. [By

Q. [By Mr. Peckham.] From the CONVERSATION you have had with the COMMISSIONERS of the Victualling-Office, did it appear that *they clearly understood the nature of a balance-bill?*

A. Yes, I am POSITIVE they did.

Q. [By Lord Mansfield.] Then the price charged the Commissioners at first, is a *nominal one*; but at last they are *satisfied* they are not IMPOSED upon?

A. Yes.

Q. In that very extract in your hand, does this Wheat delivered by Mr. Adams appear? A. Yes, 23d October, 1779, several parcels, and 729 quarters seven bushels, which was delivered from November the 1st, to the 22d.—(Several other parcels.) There are three of these articles that are under-charged.

Q. Now compare them and see whether they agree in the total amount.

Mr. Peckham. Your Lordship sees these three are included in one invoice.—This very Wheat we gave 39s. for; and by the invoice it's put down to 37s. Now does it not appear by your invoice, and your buying-book, that it's only charged 34s. 6d. That though it appears to be charged 36s. that is the fact of the balance bill.

Mr. Bearcroft. My Lord the invoice are made up of a variety of parcels; this paper which he has in his hand contains the *true state* of the account, which you'll see in the last invoice bill, there are some charged only 24s. to make the price of the whole right.

Q. In that time had you bought any at 24s.?

A. No, nor at no such price.

Q. Is there the article of 729 quarters in that paper in your hand? A. Yes.—In the invoice

it's



it's charged 36s. a quarter, that was the *ideal price*; and in the balance bill it's charged only 34s. 6d.

Q. Now was there a consignment of Pease to Mr. Atkinson from Mr. Batson? A. Yes.

Q. Before that time, did Mr. Atkinson make any agreement with the Victualling-Board for this article? A. Yes, *I made the entry in the book myself.*

Q. Before they arrived at his *warehouse*, was the bargain made? A. Yes, there was about 1100 quarters sold to the Victualling-Office about that time. There was that quantity bargained for at 30s. per quarter.

Q. Was that order executed? A. Yes.—They had rather more than 1100 quarters.

Q. Did the Commissioners see that entry in your book? A. Yes.

Q. Did the Commissioners make any bargain to buy them of Mr. Atkinson? A. I know not, but from what Mr. Atkinson said.

Q. Was it a consignment? A. Yes.

Q. Was it a *supply*, or a *purchase*?

A. It was a *supply*.

Q. This being a *supply*, you fix it by the market-price of the day? A. Mr. Atkinson bought up a large quantity of Pease that day.—Mr. Atkinson said that the Victualling-Board would take them at the same price.

Q. Did you fix them at the market-price of the day? A. It was the same price, the price of the day, but the price was *fixed at the Board*.

Q. As it was *supplied*, what was the market-price at that day? A. It was about 30s.

Q. When you supply the Victualling-Board, you then take the *market-price of the day*?

A. *Certainly.*

K

Q. How

Q. How long was it after this that the Pease were actually delivered? A. I do not know the day the ship arrived, but I think it was about the *twelfth* of May,—because some of them were delivered the *thirteenth*.

Q. At the day when they arrived you had notice? A. Yes, certainly.

Q. Had the market fallen from the *time of their arrival*, to the *time of their delivery* at the Victualling-Board? A. *They were rather lower.*

Q. If they had risen in their price when the Pease arrived, you are bound to pay your consignor that price, supposing they had risen from 30s. to 35s. would you have charged the Victualling-Board 35s? A. No.

*Lord Mansfield.* You are going Mr. Bearcroft upon the *agreement which is not authenticated.*

Q. Upon these Pease, thus sent, did the consignor allow you commission? A. Yes.

Q. Do you know any thing of 14,000 quarters of Malt, bargained for between the Commissioners and Mr. Atkinson? A. Yes.

Q. Of this quantity how many thousands were sent to the London Brewhouse? A. Two thousand to the London, the rest to Portsmouth and Plymouth Stores.

*Lord Mansfield.* What do you draw from this?

*Mr. Bearcroft.* My Lord, I am going to prove a bargain between Mr. Atkinson and the Commissioners, before any agreement was entered into for him to receive commission.

Q. What was the price fixed on these 14,000 quarters? A. The price was 30s.

Q. Then whether he gave more or less he was to receive 30s.? A. Yes.

Q. After the 2000 quarters was delivered to the London

London Brewhouse, the Brewer informed the Commissioners, that he would want 1,400 quarters more; that he should like to brew a little longer that he might have some beer in hand? A. *I was with Mr. Atkinson when he came and told the Commissioners this.*

Q. Was there 1,500 quarters sent?

A. Yes, this was *supposed* to be of the same as the original 14,000.

Q. How did you execute this order? A. At three deliveries, between August and October. This was all to be at 29s. 6d. a quarter, and 6d. commission.

Q. Those three parcels that you thus delivered, were delivered in consequence of an order to Mr. Atkinson, prior to the 28th of May? A. Yes.

Q. Did Mr. Atkinson give you any Instructions, prior to the 28th of May.

*[The witness looked at some minute or memorandum he held in his hand.]*

Q. Were these memorandums made by your own hand? A. Yes, they were.

Q. Have you any other notes or memorandums?—What did you do with those you expressly bought for the Victualling-Board?

A. The 1st of December we entered to buy for the Board by commission; after that, every person of whom we bought we put the names down with the price. *[The witness looking at some papers in his hand, said, these papers are made up every week, being sale notes.]*

Q. What becomes of the other? A. They are put upon a file.

Mr. Peckham. There are two different sale notes; all the sale notes for the Board are put upon



a file.—These that he has shewn, have not been filed.—Amongst these, are the two sale notes of Gray's and Mitton's.—There is Gray's and also Mitton's; but no file-hole in either. There is another thing, called, *Malt Adventure*.—Q. Why do you call it an *Adventure*?

A. It certainly is one, because money may be got or lost by it.

Q. Was this Malt adventure in that book?

A. Yes.

Q. In that book is there any thing that is purchased for the Victualling-Office? A. Yes.

Mr. Peckham. My Lord, Mr. Henderson is speaking of books which he sees every day, and this is to shew that the Grain in question was a bargain, and not by commission.

Q. You are a person, that has lived long with Mr. Atkinson, from your INTEGRITY, and ABILITY, he trusted you to fix the prices of Grain sent to the Victualling-Office.—Did you ever charge the Victualling-Board, *more than the market-price*?

A. No.—Always the *market-price of the day*, for the Corn and other Grain that was purchased for them.

Cross examined by Mr. SOLICITOR.

Let me ask you a few questions, if I can, to rescue this business from the *obscurity thrown upon it*.—Q. Has not Mr. Atkinson books of all the prices which he paid for Malt and other Grain?—And had you not notice to produce those books? A. They are all there.

Q. Had you any book in which Adams's Malt and Batson's Pease were entered.—Have you not books that you enter the prices of all these different articles sent to the Victualling-Board?

A. We have books for every thing that was bought for the Victualling-Office.

Q. Are

Q. Are there any *books or papers* where Adams's Malt, Gray's Malt, Mitton's Malt, and Batson's Peale are entered? A. We had MARKET-BOOKS; when they were entered into the Ledger, we considered them as of no further use.

Q. Where are those MARKET-BOOKS?

A. When we removed from the house in Mark Lane, we DESTROYED *all the subordinate BOOKS.*

Q. Why did you destroy them? A. Because we had NO ROOM *for them*, and they were of NO USE TO THIS INQUIRY.

Q. [By Lord Mansfield.] Who destroyed them?

A. I did not: THOMAS BROWN, who lived with Mr. Atkinson, *destroyed them.*

Q. [By Mr. Solicitor.] When were they destroyed? A. I do not know.

Q. When did you remove out of Mark-Lane?

A. I do not know.

Q. You, a partner! and not know when you removed? A. I do not, perhaps Mr. Wilson the book-keeper can tell.

[Mr. Wilson told him (across the Court) *last Christmas was twelvemonth.*]

Q. [to Henderson.] Now I ask you upon your OATH, whether they were *destroyed before or after* this attack was made upon Mr. Atkinson?

A. I DO NOT KNOW.

Q. WHAT! You that is partner with him, do you *not* know whether it was *before or after*.—Do you mean to say that *you really don't know*?

A. He had orders *long before* to destroy them.

Q. When did you leave Mark-Lane?

A. Last Christmas was a twelvemonth.—It had always been the custom of the house, when a *change*

*change of partners* took place, to DESTROY these subordinate BOOKS.—I remember when Mr. Cooper was taken into partnership the *same thing was done*.—When Mr. Atkinson took me into partnership, I said to him *these books may be destroyed, for they are of no use*.

Q. Now I'll refresh your memory.—You say you moved from Mark-Lane last Christmas was a *twelvemonth*? A. Yes.

Q. [to Henderson.] If it was about that time, you know Mr. Atkinson was *dismissed* from the Victualling-Board in February, 1781.—It was some months before these *books were destroyed*.—Without going through all your nice distinctions about *supply* and *purchase*; do you mean to SAY, and SWEAR, that your master, whenever he purchased Malt, or other Grain for the Victualling-Office, that he always charged *no more* than what he paid for it, only six-pence a quarter commission? A. Upon the whole he charged no more for *that* which was sent in *by commission*.

Q. I think you said that 215 quarters of Malt was sent from London, to be *mixed*, or *coupled* as you called it, with that purchased of Mr. Adams.

A. As that quantity of Mr. Adams's was inferior, some of the fine choice sort of the LONDON kind, was sent to be mixed with it.

Q. Now it happens very unfortunately that your *Master's letter*, which shall be read, says that, that Malt, must be shot by *itself*, and not *mixed* with any London Malt.

[Produced an Extract of a Letter from Mr. Atkinson to Mr. Adams.]

Mr. Bearcroft. I object to the reading of any extract.

Court.



*Court.* It cannot be read.

*Mr. Solicitor.* Q. You say that Mr. Atkinson took always no more than what he paid — only the 6d a quarter commission? A. No; no more.

Q. That's right; you'll stick to it I suppose?

A. In this way, what he sent in to the Victual-ling-Office by commission.

Q. You stated that Mr. Atkinson is so extensive in his dealings, to the amount of several hundred thousands in the year?

*Mr. Solicitor [to the Court.]* Here is the original letter of the extract which was objected to being read, from Mr. Atkinson to Mr. Adams.

*The Letter was then ordered to be Read.*

*[The following Extract is all that relates to this business, dated February 29th, 1780.]*

“ You may ship your Malt to Plymouth immediately, taking care that the quantity is about  
“ what you have heretofore said there would be  
“ of it, and as soon as shipped, send me a receipt  
“ and certificate for the same, like the inclosed;  
“ the receipt to be signed by the captain of the  
“ ship who takes it on board, and the certificate  
“ by the meter who carefully measures it into the  
“ ship, and order the ship's master to desire the  
“ master brewer to be sure to have the Malt shot  
“ (when landed) into a distinct loft by itself, and  
“ not shot among the London Malt. When your  
“ Malt is delivered, I will send you the best ac-  
“ count Sales of it, that the London market will  
“ justify.

I am, &c. &c.

CHRISTOPHER ATKINSON.”

Q. Mr.

**Q.** Mr. Henderson, you have said that Mr. Atkinson's dealings were very extensive,—now I ask you, if Mr. Atkinson was of consequence enough, at the market at Bear Key, to settle the price at pleasure, to have *raised* or *lowered* the market? **A.** He seldom was there.

**Q.** But as his connections and his dealings were such, could he not have done it?

**A.** If he had chused to *throw away* the Victualling-Board's money, he might, but I *never knew him to do it*.—Every man who deals largely, when that is known when he makes his appearance in the market we look upon it, to have some effect on the market when there is but a small quantity—In Mr. Atkinson's purchases *we managed it so as not to raise the market*.

**Q.** Did you ever know of a man having it in his power to raise the market? **A.** I *never knew* of one that had such *large orders* as Mr. Atkinson.

**Q.** Do you not know that he has rose the market? **A.** I NEVER HEARD OF IT.

**Q.** What, *never heard of it*!—Do you or do you not know, that it was so understood?

**A.** I CANNOT SAY.

**Q.** Now Mr. Henderson, I want to be a little in the secret of this supply, suppose Mr. Atkinson bought of me 100 quarters of Malt at 25s. a quarter; according to your own account he had only to find out the market price to be 30s. and charge that to the Board?

**A.** After he had orders from the Board to serve them by commission, it was *seldom* that he purchased any thing *for them* on his *own account*—If it was bought for the Victualling-Office, *what-*  
ever

ever price it was *bought for*, was charged to the Victualling-Office.

Q. Come, come, do you suppose that Mr. Atkinson did not know the meaning of purchasing and *supplying* as well as yourself?

A. Yes—to be sure he did.

Q. And yet, you say, that in no purchase that ever he made for the Victualling-Office, that he charged more than what he paid, only the 6d. commission—you have been giving us a long account, a hodge podge one, that we can hardly understand, taking these two parcels together, there must be a loss upon one? A. YES.

Q. You persist in it, that in no *article, great or small*, purchased for the Victualling-Office, that not one farthing more was taken, than what it cost him and 6d commission?

A. There was NO MORE charged.

JACOB WILSON, sworn.

Examined by Mr. SERJEANT BOLTON:

Q. You are book-keeper to Mr. Atkinson?

A. Yes, I am.

Q. This book you have in your hand, is called the journal—If it had been purchased for the Victualling-Office, it would have been in this book?

A. Yes—this is my writing.

Q. Does that book refer to a ledger?

A. Yes.

J. SLADE, Esq. sworn.

Q. You are one of the Commissioners of the Victualling-Office? A. Yes.

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Q. Do



Q. Do you remember Mr. Raymond the brewer, coming to the Board with Mr. Atkinson, when there was a talk of encreasing the quantity of Malt? A. The Board had bought 14,000 quarters of Mr. Atkinson.

Q. At what price? A. At thirty shillings.

Q. Do you remember before that was completed, of any application being made for a greater supply?

A. Mr. Raymond the brewer said, he wanted 1500 quarters more.

Q. By Sir Thomas Davenport. Is it not generally understood that all the orders of the Board are in writing? A. Yes.

Q. By Mr. Bolton. Do you recollect Mr. Raymond coming to the Board and saying, that he wished to have more Malt?

A. Yes, I recollect something of it—Mr. Atkinson was with him.

Q. Was this 1500 quarters to be supplied on the same terms as the 14,000?

A. I cannot recollect, but the paper in my hand (the Board's minute) convinces me it was on commission.

Q. What was he to have for freight of Malt to Plymouth? A. Two shillings a quarter.

Q. During the time that Mr. Atkinson served the Board, did he do it well—Did his conduct meet with your approbation? A. Exceedingly so.

Q. Perhaps there was some reason for the Board altering the mode of supplying the Victualling-Office?

A. Yes, there was some letters which appeared in the papers, that charged Mr. Atkinson with having

having charged the *Malt in the lump*,—we thought it necessary to alter the mode, for the satisfaction of the Publick.

*Cross examined by Sir* THOMAS DAVENPORT.

Q. When Mr. Atkinson supplied the Board by commission, was freight to be allowed when he paid none himself? A. No.

Q. If you had known that he charged freight when he paid none, should you have considered him as dealing honestly and fairly? A. No.

JAMES KIRK, Esq; sworn.

Q. You are one of the Commissioners of the Victualling-Board? A. I am.

Q. Do you recollect any thing of an additional quantity of 1400 quarters of Malt being ordered of Mr. Atkinson?

A. I cannot speak to that—Mr. Atkinson had various contracts, and various meetings, but I do not recollect particularly, that part not being in my immediate department.

WILLIAM RUSSELL, sworn.

Q. You are a corn meter—Do you recollect any thing of 1400 quarters of Malt sent to the King's Brewhouse?

A. No, I know nothing about it—It never went through my hands.

Mr. Peckham. My Lord, we have two persons here as witnesses who examined Mr. Atkinson's books, if your Lordship thinks it necessary to call them.

Lord Mansfield. They cannot be examined.

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—PETERS

— PETERS, Esq; sworn.

Q. How long have you been acquainted with Mr. Atkinson?

A. I cannot say how long, but it must be a considerable number of years.

Q. What is your opinion of him?

A. My opinion is, that he is a man of integrity and honesty—I have always found him so.

Q. From the knowledge you have of him do you think he *would be* guilty of perjury.

A. That is rather a matter for *others to determine*.

— HODGSON, Esq; sworn.

Q. How long have you known Mr. Atkinson?

A. I have known Mr. Atkinson about a dozen or fourteen years—The first introduction I had to him was about a proposition of marriage between him and a relation of mine—Since that I have known him intimately.

Q. What is your opinion of him?

A. He always behaved well, I esteem him as a man of as much honor and probity as any that walks the Change.

THOMAS HANKEY, Esq; sworn.

Q. How long have you known Mr. Atkinson?

A. I have known him more than twenty years—He always had a very good character in my esteem—I have done a great deal of business with him to the amount of some thousands—I always found him strict and punctual in his dealings.

BAMBER



BAMBER GASCOYNE, Esq; sworn.

My knowledge of Mr. Atkinson has been about eight or nine years—My connections with him may rather, from living in the neighbourhood, be said to be in the table-way; but from the farmers in Essex, with whom I am acquainted, he has the best of characters; they say he is the best cornfactor that goes to market; and my own opinion of him is, that he is a man of honor and integrity, and I would trust him with any thing.

CLAUD SCOTT, Esq; sworn.

Q. You are a cornfactor?

A. Yes, and have had very considerable dealings with Mr. Atkinson, they have always been fair, just and honest.

## R E P L Y.

Mr. SOLICITOR.

May it please your Lordship, and you Gentlemen of the Jury, I must rise and return my thanks to my learned friend, for the compliments he has paid me, for my candour in the conducting this business. I do assure him it is no flattery when I say that I am proud of that compliment, though I have known him long; and it is not flattering him in his profession to say, that I have seen his candour on many occasions. Gentlemen, I hope I shall not forfeit that good opinion, which he so obligingly entertained, in the subsequent part of this business. But as this cause has impressed my mind with different ideas to those that my learned friend entertains,

entertains, I think it necessary to call your attention to the nature of the charge; to the evidence which has been given in support of it; and then I shall make a few observations on the manner in which it has been attempted to be repelled, in the evidence which has been given for the Defendant.

Gentlemen, my learned friend has talked a great deal upon a text as plain and as clear as any thing I ever saw; the terms of this Indictment are plain, without any ambiguity. He has taken a great deal of pains to distinguish between a *bargain* and a *purchase*, and between a *purchase* and a *supply*; and for the purpose of cutting the Affidavit in two, he would have you to believe that the Defendant, in that Affidavit, is speaking of one thing in a *technical* sense, and of the other in a plain and *common* sense; but look at the Affidavit, and see what he has sworn. He has sworn, that in all his transactions with the Victualling-Office, he has charged them no more than his commission; that he never did at any time charge more than 6d a quarter for Grain of any kind. Now, if I can understand these words, they are no more than this, *that in all my transactions with these Commissioners, I charged the commission of 6d a quarter, and in no instance have I charged more.* In all these transactions, there is not a hint in this Affidavit of any difference between what they call *supply* and *purchase*; indeed there is not the word *purchase* in the Affidavit; but if it were so, these transactions are purchases in every sense of the word, and purchases *under his own hand.*

Gentlemen, before I come to that part of the evidence, give me leave to lay out of the case what my friend says respecting the *trifling overcharge of freight*

freight—allowing that *little mistake* of the freight from Plymouth—I agree perfectly with my friend if the fact were really so and nothing more appearing; YES, but how is it in the articles we have gone upon. Mr. Atkinson has made £.218 19s 3d in the articles which we proved, sure that is not a *trifle*;—but does my friend know, that either in publick prosecutions, or private prosecutions, the great difficulty there is to come at the fact.—My friend cannot state a reason why a Jury should believe that all this was *mere mistake*, neither can he persuade them but that in other instances there might be the same; or, that he was honest, in all his *other transactions*. I don't desire you Gentlemen, to conjecture or to go upon surmises, but you are to try the Defendant on the evidence which has been given. Every one of the articles, which I opened to you, of *overcharge* in the MALT, in the PEASE, and in the WHEAT, have been PROVED—He pays one 4s 8d per quarter, and another 1s 8d per quarter, *less* than what he charges, for the very same article, to the Victualling-Office—But they say, these are not purchases, for in no case, did he take more than what he paid, over and above the usual commission. His witness Henderson, said, that great quantities of Corn were *purchased* by Mr. Atkinson, for the public service; that he *never* charged more than for his commission. For a moment let me refer to the *evidence*; there is not a *victualling bill* that he received, but what mentions the *quantity* for which the bill is given; not only so, but I will refer you to the *orders of the Board*—I'll read you the terms of these victualling bills  
 “WE pray you to pay Mr. Christopher Atkinson so  
 “much for such a quantity of Grain, by him purchased,  
 and



*"and delivered into his Majesty's Stores, pursuant to an order of such a day."*—What do they talk about this mighty curious distinction, purchase, and supply, and what does it amount to, now it is admitted? It cannot be defended, but all these were purchases, made by Mr. Atkinson for the public use; then you are to consider at *what price did he buy it, and what price did he charge.*—The difference is not all on freight, though it is pretty singular, that Mr. Atkinson should go and charge freight to the Victualling-Office which he had never paid.—Mr. Adams had no allowance for freight; Mr. Atkinson charges 27s. to the Board, besides freight and other expences—*has this in his own hand,* then goes and pays Mr. Adams, the person who furnished the quantity, 25s. a quarter for the very Malt; he ought to have paid Mr. Adams the money that he received, but this he did not, and retains it till this moment.—There never was a case more clearly, or more distinctly proved than this.

But Gentlemen, it is not my learned friend's paying his client the compliment, of his being, a *man of honour, a man of property,* and a MEMBER OF THE HOUSE OF COMMONS, that can serve him in this business; the question is, has he acted *up towards that character?*—My friend says that he was provoked to proceed against Mr. BENNETT, for *unprovoked, and unjust abuse.*—He moved this Court for that Rule, upon this very affidavit;—That rule so obtained, was *abandoned by himself.*—They knew it would answer no purpose whatever, they knew there was no *foundation for it.*—What did he think after *abandoning this Rule?* That if he had persisted

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in it, it was only making his own SHAME more CONSPICUOUS.

But Gentlemen, it does not rest here.—Did ever mortal man, a man of the world, a man practised and conversant in great affairs,—Did ever an innocent man, who is not ashamed that all his transactions and dealings should be exposed to the Publick.—A man so attacked—his reputation and veracity called in question, a man so arraigned, called upon to defend himself, do it in this way by, *sinking all his evidence, by BURNING all his papers.*—TRUTH does not bide itself in darkness, it's bold and open, without disguise; but as soon as this man is attacked, then the order was given to DEMOLISH all his books.—Mr. Henderson tells you what they were, that the persons names were entered of whom they purchased, the price given, that was the very point, and upon which the charge rested. If you can shew us that there was no deceit, but that the transactions were fair, there would have been an end to this prosecution.—You have undertaken to supply government at such a rate—ready money, and a discount allowed, for these bills you received in payment.—You are therefore to be content with the profit of 6d. a quarter.—He says he never had more, —He swore he had no more, but he is charged, with taking a great deal more, and having cheated the Publick.—During all this, what would have been the language of an INNOCENT man, but that *I have taken no more, all my books and papers are ready to prove it.*—They would have been satisfactory evidence; but he thinks better of it.—He thinks it's better to DESTROY them, and get Mr. Henderson to SWEAR,—though I will not say, that such an imprudent act was never done by an honest man; but

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when he knew of this charge, it is not a proof of innocence to destroy the very evidence which would have cleared up the transaction. — He knew that he had notice to produce them long ago, therefore the presumption is, he knew they would have CONVICTED him, had they been produced. — His guilt would have been entirely established; he certainly acted prudently, he was wise in his generation, to put them in the FIRE, that no evidence should come out of his closet.

Gentlemen, Mr. Henderson swears flatly about this purchase and supply; — but Mr. Henderson acknowledges, Mr. Atkinson is as well acquainted with the distinction, between purchase and supply, as he is. — But in these transactions, there don't appear upon the face of them to be any thing else but purchases; it is clear from the agreement with the Victualling-Board. — Gentlemen, my learned friend says, it must be wilful and corrupt; and without it, it is only a mistake, it cannot be perjury. — At the very same time, when this motion was made, when this Affidavit was sworn to, this man understood its meaning, and at the time he executed it; and yet in no one instance has he paid so much as he received. — He could not but know, that it was impossible for him to escape censure, he has uniformly either cheated the people with whom he dealt, or the Publick at large. — He called the Commissioners of the Victualling-Board — one said, that his conduct to them was perfectly satisfactory — That they considered his dealings to be fair and upright, but then he said, if he had known that the freight was paid by the seller, he should not have thought it was dealing fairly to have again charged it to the Board. But perhaps Gentlemen, he was not a judge. — There is not the least doubt but that the defendant is guilty  
of



-of perjury, if he swore to that which he knew was not true.

Gentlemen, my learned friend says, that, this prosecution is a vexatious suit; calculated to hurt, and to keep his client in hot water.—That an indictment was preferred before, but dropped.—The sole reason why that indictment was laid aside by a *NO LI PROSEQUI*, it was thought defective in point of form.—OH; but says my learned friend, do you call this a prosecution for the sake of publick justice? Though it's conducted by the officers of the Crown, it's to be imputed to the malignity of Mr. BENNETT.—What ill-will there may be, between Mr. BENNETT and Mr. ATKINSON, I know not.—I have not called Mr. BENNETT as a witness, because I expected hints of this kind, and that the evidence before you, should be as pure, and untainted as possible.—Those dealers in Corn who have been called, they gave their evidence with temper and moderation, but they have said what proves the FALSHOOD of Mr. ATKINSON.—The meters, the bills of parcels, and the orders of the Victualling-Board, all prove the fact to be contrary to what Mr. ATKINSON has sworn;—upon my word, if ever there was a case that solicited the grave attention of the Jury, it is this; the great consequence, of men employed by government, as he has been, when acting unfairly, it is of great importance to the Publick.—It is not a man's own affairs—not an injury done to an individual, but it is the affairs of the Publick, which we cannot consider but as if they were our own.—Where a man may think that the Commissioners do not know, nor have they means of knowing, and perhaps if they did know, it might not appear to them in the same light,

that he is at liberty to indulge himself, in an inordinate profit; I do not wonder that we hear of so much *mismanagement* in the public expenditure.—I do not know but it is in many other instances in those public contracts.

Gentlemen, my learned friend says, that Mr. Atkinson has an *exceeding good character*, as a man of PROBITY and INTEGRITY,—I will not affect that character, the verdict which you will give *will do it*.—If any one of you are not satisfied of his guilt, whatever your reasons may be, I have no objection that he should enjoy the *character* of an *honourable*, and an *honest man*. Gentlemen, with these observations, I leave it entirely to you, not doubting but you will give a just and upright verdict.

### CHARGE TO THE JURY.

Gentlemen of the Jury, the greatest hardship is laid upon you and me; the fate of the defendant, is very much interested—the fate of the Publick, is likewise very much concerned—yet difficult as it is, we must do our duty; to do that, we must give the closest attention to the evidence, which has been given, on both sides.—There are two things for you to consider in order to form your opinion; the first is, what is the meaning of the words, which the Defendant means to convey, in his Affidavit, or, in other words what has the Defendant sworn.—The second question is, is that which he has sworn true, or false. Before I bring to your recollection the proofs which have been laid before you, as to the falsehood of what is sworn—you will observe, that there are but *two*  
ways,

ways, in which the Commissioners of the Victualling-Office transact their business—One is, making a contract with the seller;—In that case, they exercise their own judgment, both with respect to the commodity, and the price they paid for it.—There is another way they transact business, that is, by a factor—the nature and business of a factor, is clearly this—he purchases for his employer, has a commission, for his trouble—he's the agent of the buyer,—he can have nothing but his commission.—But when they do business by contract—the contractor pays all expences, runs all risques,—gets all profits;—one or other of these ways the Commissioners transact the business for the Publick,—the Defendant was employed by them, as cornfactor.—It happened that some anonymous writer attacked the Defendant in that capacity, and it cannot but be lamented, the liberty that is taken with public characters by anonymous writers—it cannot do good—it has done much mischief.—The charge laid against him by the writer, who afterwards avowed himself, is, that he being employed as cornfactor for the Commissioners of the Victualling-Office, he charged them with a larger sum than that which he paid for it, besides his commission—the specific sum is not mentioned; but it is not material to the argument—that it came to an overcharge of three, four or five shillings.—The Affidavit takes no notice of any other than a general charge against him, in his dealings with the Commissioners.—To this, the Defendant answers by his Affidavit—and it was very material for the purpose it was used.—In justification of his own character, he applied to this Court for leave to file an information against

William



William Bennett. The Court never grant a private man liberty to file an information for a libel against himself, but upon Affidavit—therefore, it was necessary for him to make this Affidavit, to contradict the facts complained of.—But it was necessary for another purpose, for the end was to vindicate his conduct to the Public—to clear that character to the Publick, especially as he had been represented as a person who had committed and continued to commit gross frauds on the Public.—To this charge, he swears in these words—Gentlemen, you will turn them in your minds.—“*And this deponent saith, that in the transactions he hath had with the said Commissioners, as their cornfactor—he hath charged them the usual commission of 6d. per quarter and no more, for all Malt and Grain supplied by him; and that he never did, at any time, during his transactions with the said Commissioners, charge more than the usual commission of 6d. per quarter, beyond the price he actually paid for any Malt or Grain, purchased by him, for the said Commissioners as their cornfactor.*”—This, Gentlemen, is the Affidavit—it speaks for itself—the words are plain.—

Gentlemen, the next question is, if the words sworn in this Affidavit are false, then, in what manner are they so.—They say, it is false.—In what way is it false?—The Defendant bought of William Adams a quantity of Malt, where you charge the Commissioners of the Victualling-Office 27s. a quarter, besides freight and other expences attending the delivery, when you paid him but 25s. including all charges, which makes a difference of 4s. 8d. a quarter—and you charge the commission likewise.—The question is, whether he purchased this Malt for the Victualling

ling-Office as their cornfactor.—The first thing to prove this, is, the order of the Victualling-Board—the bill of parcels under Mr. ATKINSON's own hand, given to the Commissioners—sent in the Carolina, for the King's Stores, at Plymouth, shipped by order of the Commissioners, for victualling his Majesty's Navy—the Malt in question, is sent by the Providence, John Helems, Master, 250 quarters and one bushel of Malt.

Now Gentlemen, you will go by steps—this Malt is delivered by order of the Board, that minute has been read, wherein it is ordered, that a certain quantity of Malt should be purchased by the Defendant for the King's Stores at Plymouth.—The next piece of evidence, is the Victualling Bill, in these words, "*We pray you to pay unto Mr. Christopher Atkinson, the sum of seven hundred ninety-three pounds thirteen shillings and seven pence, for the Malt, &c. as undermentioned by him purchased and delivered on board the Providence and Carolina, John Helems and Richard Jones, Masters, for Plymouth, per receipts 13th and 29th March, and minute 7th of January, 1780.*"

Both the invoice and the Victualling-Bill refer to the order of the purchase, and delivered pursuant to that order.—The next evidence is, William Adams, who gives a full and true account of the transaction, that he applied to the Defendant to send in some Malt for the Commissioners to Plymouth, that no price was fixed, but that he was to have the fair market-price—he sent 250 quarters in the Providence, John Helems—then they produce a letter from Mr. Atkinson to Mr. Adams, respecting this Malt. Mr. Adams goes further—he says, I bore all



all expence of freight and delivery, and had only 25s. a quarter—he looked for the market price, Mr. Atkinson gave him 25s. and no more.—Mr. Tonkin proved, that he received this Malt out of the Providence into the King's Stores at Plymouth—that it was very good Malt, but not of the best sort.—Now Gentlemen, this is the evidence in support of this particular charge—But several objections have been made to it.—1st. That it being of an inferior quality, there was a parcel of Malt, that was to come from London, to mix with it—that the price that was put upon it was an average price, as between the two parcels of Malt.—Why take the average price?—why are they not charged separately?—what prevented putting each to a separate account, and not mix them together?—They came from two separate places, purchased of different people—had they been mixed in the warehouse there would have been some reason for taking the average; but they come from different places—kept separate all along.—

Another answer is given, that this is a *supply*—that is, buying and selling.—Dealing with a factor, it is well known, he can only do by commission, and charge no more than his commission—but here we have what they call a supply; that is, when the Defendant, out of a great quantity mixed together, cannot give an account of the particular price for two or three months; but this is not the case—here commission is charged.—

*Mr. Bearcroft.* I must beg your Lordship's pardon, it was consigned to him.

*Lord Mansfield.* I know that as well as you, I am explaining to the Jury the nature of the defence.—

Gentlemen,



Gentlemen, it is contended that this is a sale, and not bought by commission.—According to his own account of it, it is either, Corn bought by him for the Victualling-Office, or consigned to him.—If consigned, is he to charge the Commissioners more than what he pays the consignor.—But he purchases this, in consequence of an order, of the Victualling-Board; it is the same whether he purchases it of the feller, or has it consigned to him.

A third ground of defence that is made, is, that this is the only contract he entered into for the Victualling-Office, where the freight was paid by the person who sold the Corn; and making this charge was owing to a mistake of the Clerks.

The second assignment, to which evidence has been brought—It is supported by evidence much the same as the one I have been stating.—It is an over-charge upon a parcel of Wheat sold by William Adams to the Defendant.—The bill of parcels given to the Commissioners is produced, for Wheat which he purchased by their order, as appears by their minute of the 28th of May; and the Victualling-Bill for this Wheat refers to that order of the Commissioners; and Tonkins proves, that he received the whole quantity; that it was delivered into the King's Stores.—Adams proves, that the price of the Wheat he sold the Defendant was settled at 34s. 6d. per quarter—and it appears that he charges 1s. 6d. a quarter to the Victualling-Board, more than what he paid Mr. Adams.—Gentlemen, the same sort of defence is made to this charge as the former—that it was a supply, or what they call the balance-bill.—Henderson says, they cannot fix the price exactly.—The price in

the Bill of Parcels, being a nominal one, they afterwards, upon casting up their accounts, make the whole right.—If they are too high in their charge in one instance, they deduct from another account, and take care to make it up in the balance, only six-pence a quarter remaining upon the whole for commission.—But in this case, how is it? This Wheat was never joined to any other article, —The Defendant purchased this Wheat by order of the Commissioners—It is carried and delivered to them, in consequence of that order, and charged by itself.

Gentlemen, the third article, that I am to state particularly, is, with regard to a quantity of Pease.—There the Bill of Parcels is lost, but the Victualling Bill is produced; that Bill refers, as they all do, to the order of the Commissioners.—He claims six-pence a quarter commission, which, with the price, amounts to thirty shillings and six-pence a quarter.—Batson is called, who sent the Pease to the Defendant, and, he says, “that upon the twenty-fourth of June, the Defendant Mr. Atkinson sent me an account of the sale of the Pease, the price he set was twenty-eight shillings and six-pence a quarter, and no more,” they account for this overcharge, in the same way as the former articles.

The fourth article, is with respect to a quantity of Malt, where there is likewise an overcharge.

Gentlemen, you have heard the Defence which has been made, you will consider the whole of the evidence—if you are satisfied that those items were bought by the Defendant for the Commissioners of the Victualling-Office, by their order,

order, and that he has taken more than sixpence a quarter for his commission, you must find him guilty,—on the other hand, if you are not satisfied that he has charged more, but that he has acted agreeable to what he has stated in that Affidavit, then you will acquit him.——

*The Jury after a few minute's consideration brought in their Verdict, finding the Defendant, GUILTY.*

*The assignments of which he was convicted, was the second, third, fourth, fifth, seventh and ninth,—to the first, sixth and eighth, no evidence being given, they fell of course.*

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